SIGNATORY AGENCY COMMITTEE AGREEMENT

To

Integrate Aquatic Resources Permit Requirements
Into the
National Environmental Policy Act
And the
State Environmental Policy Act
Processes in the State of Washington

September 17, 2002

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I. APPLICABILITY

A. Projects

This agreement applies to all transportation construction projects in the state of Washington requiring a U. S. Army Corps of Engineers individual permit (individual Corps permit) and Federal Highway Administration (FHWA) action on an environmental impact statement (EIS) under the National Environmental Policy Act (NEPA)and Washington State Department of Transportation (WSDOT) action under the State Environmental Policy Act (SEPA).

The parties to this agreement retain the ability to decide whether a project that meets the criteria listed above does not warrant involvement in the Signatory Agency Committee (SAC) process due to minimal natural resource impacts.

Projects that either (1) do not initially appear to meet the criteria for an individual Corps permit following consultations with the Corps, or (2) have been exempted from the SAC process following a presentation to the SAC, but are determined at a later date to qualify for either are not required to enter the SAC process.

B. Parties to the Agreement

Parties to this agreement are the Federal Highway Administration (FHWA), Washington Division; National Marine Fisheries Service (NMFS), Northwest Region; U. S. Army Corps of Engineers (COE), Seattle District; U. S. Environmental Protection Agency (EPA), Region 10; U.S. Fish and Wildlife Service (USFWS), Western Washington and Upper Columbia Fish and Wildlife Offices; Washington State

Department of Ecology (Ecology); Washington State Department of Fish & Wildlife (WDFW); and Washington State Department of Transportation (WSDOT).[1]

C. Parameters of Participation

Regulatory/resource agency participation in this process does not imply endorsement of all aspects of a transportation plan or project. Nothing in this agreement or its appendices is intended to diminish, modify, or otherwise affect the statutory or regulatory authorities of the agencies involved.

See Appendix A, Statutory Authorities for Agreement.

II. BACKGROUND

Interagency conflicts over highway/aquatic resource issues take place in a very complex administrative arena defined by many federal, state, and local laws, ordinances, and regulations. This has resulted in overlapping jurisdictions and some duplication of effort that cause increased cost and time delays for transportation projects.

In a May 1, 1992 agreement, the U. S. Department of Transportation, the U. S. Department of Army–Civil Works, and the U. S. Environmental Protection Agency adopted as agency policy: (1) improved interagency coordination, and (2) integration of NEPA and the Clean Water Act Section 404 procedures.

In September 1993, the (Washington State) NEPA/404 Merger Task Force was formed to write an agreement in the state of Washington to implement this national policy. After an initial meeting, the group decided to include SEPA in the merger process, because of the state requirement for SEPA to be cleared before permits are issued.

In November 2001, the SAC, which is responsible for implementing this agreement, created a sub-committee to evaluate potential improvements. The goal of the sub-committee was to provide a clear, consistent, and

[1]Nothing herein is intended to conflict with current directives of any of these agencies. If the terms of this agreement are inconsistent with current directives, then those portions of this agreement that are determined to be inconsistent shall be invalid; but the remaining terms and conditions not affected by the inconsistency shall remain in full force and effect. At the first opportunity for review of the agreement, all necessary changes will be accomplished by either an amendment to this agreement or by entering into a new agreement, whichever is deemed expedient to the interest of all parties.

efficient SAC process that occurs within a predictable timeframe, provides a forum to exchange information, has committed participants, considers and protects the environment, and results in a project acceptable to all participants. The SAC endorsed the improvements recommended by the sub-committee on April 16, 2002.

III. NEPA/SEPA/SECTION 404 INTEGRATION

The signatories to this agreement are committed to integrating the Section 404 permit process and other related permitting and certification procedures into the NEPA and SEPA EIS processes at the transportation planning, programming, and project development stages. We are committed to ensuring the earliest possible consideration of environmental concerns at each of these three stages. We place a high priority on the avoidance of adverse impacts to Waters of the U. S. and Waters of the State including wetlands, other aquatic resources, and associated sensitive species, including threatened and endangered species. We recognize the need to consider non-water related impacts, and acknowledge that these environmental impacts may affect the decision on the least environmentally damaging practicable alternative (LEDPA).

Whenever avoidance of Waters of the U. S./Waters of the State is not practicable, minimization of impacts will be achieved, and unavoidable impacts will be mitigated to the extent reasonable and practicable. If the project impacts are so substantial that permits would probably be denied, the signatory agencies agree to implement the issue resolution process to see if the project could be appropriately modified. We will integrate compliance with the Section 404(b)(1) Guidelines and other related permitting and certification procedures with compliance with the NEPA and SEPA EIS processes.

IV. ANTICIPATED BENEFITS OF PROCESS

The process embodied in this agreement will:

A. Provide increased environmental protection and improve and enhance the natural resources in watersheds throughout the state.

B. Facilitate more realistic and predictable transportation projects, schedules, and budgets.

C. Allow better utilization of agency resources.

D. Provide for early involvement of resource and regulatory agencies and the public in the WSDOT project scoping and development processes.

E. Provide for joint-agency evaluation and early resolution of problems/issues.

F. Provide for early identification and resolution of environmentally sensitive issues.

G. Reduce duplication of efforts.

H. Provide program continuity and a consistent statewide approach for developing projects.

I. Avoid and/or minimize and mitigate impacts to the environment.

J. Maximize the probability of the project receiving the appropriate permits and approvals from the participating agencies.

K. Maximize the quality of the environmental impact statement (NEPA) documentation and process.

V. IMPLEMENTATION PROCEDURES

A. SAC Process Steps

Appendix B outlines the process for implementing this agreement among the signatory agencies.

B. Stormwater

Stormwater requirements should meet or exceed the federal, state, and local standards and policies.

Best Management Practices (BMPs) for stormwater run-off and streambank erosion control for transportation construction projects shall be consistent with the WSDOT Highway Runoff Manual as approved by Ecology, local agencies' guidelines, or EPA's Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters, whichever is more stringent. The WSDOT Highway Runoff Manual is incorporated into this agreement by reference.

C. Guidance

Appendices C, D, E, and F are for guidance purposes only. They are intended to facilitate the implementation of this agreement.

VI. CONCURRENCE/NONCONCURRENCE

The intent of the concurrence points in the process is to preclude the routine revisiting of decisions that have been agreed to early in the process, and encourage early substantive participation by the regulatory/resource agencies. A concurrence point is a point within the NEPA/SEPA/404 process where the transportation agency (FHWA, WSDOT) requests formal concurrence and the signatory agencies provide concurrence, nonconcurrence, or elect to waive participation at that stage.

Agencies agree not to revisit previous concurrence points unless there is substantial new information or substantial changes have occurred to the corridor plan, the project, the environment, or laws and regulations.

A. Concurrence Points

There will be three concurrence points:

1. Purpose and need (nonconcurrence, available to all agencies regardless of an agency's statutory authority, is limited to transportation issues);

   Screening criteria for alternatives selection

2. Project alternatives to be evaluated in the draft EIS

3. For COE, USFWS, EPA, and NMFS—NEPA/SEPA preferred alternative/apparent section 404 least environmentally damaging practicable alternative and detailed mitigation plan, and for Ecology and WDFW—NEPA/SEPA preferred alternative and detailed mitigation plan

B. Timeline for Responding to a Concurrence Request

Within 45 calendar days of the receipt of a request for concurrence, the regulatory/resource agencies will provide their comments in writing, stating concurrence or nonconcurrence for each concurrence point. In lieu of concurring or nonconcurring, a resource agency may waive its

opportunity to act on that concurrence point or an individual element of that concurrence point. The project proponent will issue a reminder to the resource agencies 14 calendar days prior to the 45-day deadline. Resource agencies may request a maximum 10-working-day extension. Unless an extension is requested, the project proponent will initiate the issue resolution process if a resource agency does not respond within the 45-day period. If an extension has been requested, a resource agency will have the original 45 days plus 10 additional working days to respond before the issue resolution process is initiated due to lack of response. All responses will be tracked by WSDOT.

The project proponent will have 45 calendar days to respond to all comments of resource agencies. If the project proponent cannot provide a complete response to comments within the allotted timeframe, the project proponent will provide the SAC with an explanation and a date when a response will be provided. All responses will be tracked by WSDOT.

These timelines apply only to the concurrence points identified in this agreement.

C. Definition of Concurrence

Concurrence is a written determination that

1. The information is adequate for this stage, and

2. The project may proceed to the next stage without modification, and

3. The agency's concurrence is consistent with its statutes and regulations (given available information).

4. And, if applicable, concerns were adequately addressed by the project proponent following a nonconcurrence.

D. Definition of Nonconcurrence

Nonconcurrence is written determination that

1. One or more of the concurrence definition points, described in "C" above, is not being met, and

2. The issue resolution process will commence and the project will not proceed to the next concurrence point until each issue is resolved.

A nonconcurrence will be accompanied by a detailed explanation of the reasons for nonconcurrence. The reasons for nonconcurrence will identify the statutory or regulatory authority (see Appendix G) upon which the nonconcurring agency has based its decision.

A nonconcurrence will become a concurrence if and when a nonconcurring signatory agency and project proponent achieve successful issue resolution and the signatory agency affirms in writing its concurrence on the concurrence point.

When the issue(s) is resolved, the project proponent and nonconcurring agency will each provide the other SAC agencies with written documentation that outlines the issues and their resolution. If the project changes are substantial, the project proponent will submit a revised concurrence point package to the SAC immediately. If the project changes appear minimal and non-substantive, the project proponent must verify this determination with SAC. Within 15 calendar days of the project proponent verifying receipt of the determination request, the SAC will decide if the changes to the project, needed to achieve issue resolution, are significant enough to warrant revisiting the concurrence point.

E. Definition of Waive

A waive is written determination by an agency that it voluntarily gives up its opportunity to provide concurrence or nonconcurrence. Agencies that decide to waive agree not to revisit that concurrence point.

An agency may elect to waive its concurrence opportunity at the beginning of the SAC process for a project or at a specific concurrence point. At a concurrence point, an agency may waive the opportunity to concur or nonconcur on the entire concurrence point or an individual element of that point.

F. Advisory Comments

In addition to concurring or nonconcurring based on its statutory or regulatory authority (see Appendix G), a resource agency has the option to provide comments. Concurrence with conditional comments

is not permitted. Comments accompanying a concurrence are advisory only, and will not trigger the issue resolution process.

Comments will be provided at the same time as concurrence or nonconcurrence. The project proponent will have 45 calendar days to respond to resource agency comments. If the project proponent cannot provide a complete response to comments within the allotted timeframe, the project proponent will provide the SAC with an explanation and a date when a response will be provided.

G. Agencies Acting on Concurrence Requests

All signatory agencies, except WSDOT and FHWA (the project proponents), will provide a response to a concurrence request.

VII. ISSUE RESOLUTION

Issue resolution procedures may be initiated upon request of any signatory agency. Reasons may include:

A. Written nonconcurrence at any of the three concurrence points.

B. A disagreement on the interpretation of this agreement.

C. Lack of a timely response (in accordance with Section IV) at any concurrence point.

See Appendix H, Issue Resolution Process.

VIII. AGENCY COMMITMENTS

A. NEPA/SEPA EIS Coordination

The signatory agencies will coordinate with state and local agencies to the fullest extent possible to reduce duplication between NEPA and SEPA and other state and local requirements, unless specifically barred from doing so by some other law. Where state laws or local ordinances have EIS requirements in addition to, but not in conflict with, those in NEPA, the federal agencies will cooperate in fulfilling these requirements, as well as those of federal laws, so that one process will comply with all applicable laws.

This agreement in no way obligates any signatory agency to the expenditure of agency funds.

B. Tenets of Participation

The signatory agencies agree to follow the tenets of participation in implementing this agreement (Appendix I).

C. Cooperating Agency

Any agency (including signatory agencies, Indian tribes, and other federal, state, and local agencies) may ask to be a Cooperating Agency.

See Appendix J, Responsibilities of Signatory Agencies.

D. Lead Agency

FHWA and WSDOT will be Co-Lead Agencies (unless SEPA rules identify another agency as the Lead Agency) for all federal-aid transportation projects, funded under Title 23 United States Code, developed under this agreement (except that WSDOT may not need to participate in certain federal projects developed by FHWA's Western Federal Land Highway Division). Other interested federal, state, or local agencies may be considered for Joint Lead Agency status upon request. Unless otherwise agreed in writing, FHWA will be the Federal Lead Agency responsible for supervising preparation of the environmental document.

See Appendix K, Responsibilities of the Lead Agencies.

E. Participation Request

FHWA will request the participation of any federal agency for joint (FHWA/WSDOT), NEPA/SEPA projects. WSDOT will request the participation of any state agency for joint NEPA/SEPA projects at the earliest possible time in the process.

F. Facilitation

WSDOT has overall responsibility for filling the role of facilitator for SAC meetings, utilizing a WSDOT representative, contractor, or a designee from another participating SAC agency.

G. Early Warning

WSDOT and other project proponents will submit an "early warning packet" to SAC members 30 days prior to the project's first SAC presentation. Typically, the early warning packet should be a two-page document that uses maps, short paragraphs, and bullet points to identify why the packet is being sent, and to identify generally the proposed project, the project location, potentially affected aquatic and other natural resources, and a project point-of-contact.

H. Avoidance of Impacts

All agencies will place a high priority on the avoidance of adverse impacts to wetlands, and to other aquatic and natural resources and associated sensitive species, including threatened and endangered species. If a project has the potential to adversely affect wetlands or other aquatic resources requiring an individual Corps permit, avoidance alternatives will be thoroughly evaluated and selected for implementation unless they are not practicable. Whenever avoidance of impacts is not reasonable or practicable (NEPA/SEPA or 404), a range of alternatives will be evaluated to determine the apparent least environmentally damaging practicable alternative (preferred alternative).

I. Low-Value Resources

The agencies agree to use flexibility in requiring NEPA/404 alternatives analysis when resource values are low[2] or for projects that have the potential for only minor impacts on the aquatic environment. Application of this provision will be consistent with the joint memorandum of August 23, 1993, from EPA and the COE and Regulatory Guidance published in the Federal Register on September 10, 1993. An alternatives analysis will be required, but the level of detail and rigor of the analysis will be commensurate with the magnitude of the impact. All resources affected by the project, including those with low value, will be mitigated as stipulated in other sections or appendices of this agreement.

[2]SEPA does not require an alternatives analysis unless the project would have probable significant adverse environmental impacts.

J. Pipeline Projects and NEPA Tiered/Programmatic Projects, SEPA Phased Environmental Review

"Pipeline projects" are defined as projects that are currently in the SAC process at the date of signing this revised agreement and do not have an approved final environmental document. These projects will proceed forward through the SAC process as described by this revised agreement. These projects will not be required to re-obtain concurrence on already completed concurrence points.

In addition, some projects are developed as "tiered/programmatic projects under NEPA and phased environmental review under SEPA" in which the environmental document is phased in a more general analysis intended to address larger program or policy issues. This agreement applies to tiered/programmatic and phased environmental review projects/documents. However, the nature and extent of analysis necessary in each of these documents will be negotiated among the signatory agencies on a case-by-case basis.

K. Project Development Stage

All signatory agencies agree to implement Appendix B.

1. FHWA agrees to not approve a final EIS unless there is written preliminary agreement from the COE, after consultation with EPA, USFWS, and NMFS that the project appears to meet 404 (b)(1) analysis and mitigation requirements.

2. WSDOT agrees to:

    a. Request regulatory/resource agency involvement early in the joint NEPA/SEPA EIS process.

    b. Provide the information necessary to identify the least environmentally damaging practicable alternative and associated proposed mitigation early in the joint NEPA/SEPA EIS process.

    c. Ensure that WSDOT project proponents will respond to all agency comments within the timeframes outlined in Section VI of this agreement.

3. Federal and state regulatory and resource agencies agree to:

a. Participate in the project development process when aquatic and other natural resource impacts may be substantial.

b. Review project environmental documents and related materials, provide comments on those materials, and act on the three concurrence points identified in Section VI of this agreement.

c. Respond to requests for comments and concurrence within the timeframes outlined in Section VI of this agreement.

IX. EFFECTIVE DATE, REVISIONS, AND TERMINATION

This agreement becomes effective upon signature of all agencies and may be revised upon approval of all signatory agencies. Revisions may be proposed by one or more signatory agencies. Proposals for revisions will be circulated to all signatory agencies for a 30-day period of review. Approval of such proposals will be indicated by written acceptance. This provision does not prevent agencies from entering into supplemental agreements to address issues of limited concern affecting only a portion of the signatory agencies.

Any party may choose to withdraw from this agreement upon 30-day written notice to the other parties of this agreement that have not given notice of withdrawal or termination.

X. MONITORING/EVALUATING IMPLEMENTATION OF THE AGREEMENT

The signatory agencies will monitor the success of the agreement process and modify it as necessary to improve it. Each signatory agency shall designate a representative to serve on a monitoring and evaluation team.

See Appendix L, Monitoring and Evaluation.

XI. SIGNATURES

Daniel M. Mathis, P.E. — **6/27/02**

Division Administrator — Date
Federal Highway Administration, Washington Division

D. Robert Lohn — **6/21/02**

Regional Administrator — Date
National Marine Fisheries Service, Northwest Region

Tom Fitsimmons — **6/15/02**

Director — Date
Washington State Department of Ecology

Jeff Koenings — **7/10/02**

Director — Date
Washington State Department of Fish & Wildlife

Douglas B. MacDonald — **7/3/02**

Secretary of Transportation — Date
Washington State Department of Transportation

Colonel Ralph H. Graves — **9/17/02**

District Engineer — Date
U. S. Army Corps of Engineers, Seattle District

John Iani — **8/5/02**

Regional Administrator — Date
U. S. Environmental Protection Agency, Region 10

Ken S. Berg — **7/10/02**

Manager — Date
U. S. Fish and Wildlife Service, Western Washington Fish and Wildlife Office

Appendix A

STATUTORY AUTHORITIES FOR AGREEMENT

I. INTRODUCTION

The following list of federal and state legislation and regulations provides the basic statutory authority to enter into the SAC agreement. This list is not intended to be all inclusive.

II. FEDERAL LEGISLATION AND REGULATIONS

A. National Environmental Policy Act of 1969, as amended

1. 23 CFR 771, Environmental Impact Statements and Related Procedures

2. 33 CFR Parts 230 and 325, Environmental Quality; Procedures for Implementing NEPA

3. 40 CFR Parts 1500-1508, Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

B. Sections 401, 402 & 404 of the federal Water Pollution Control Act (Clean Water Act) of 1972, as amended

1. 33 CFR Parts 320 through 330, Regulatory Programs of the Corps of Engineers.

2. 40 CFR Part 230 Guidelines for Specifications of Disposal Sites for Dredged or Fill Material.

C. Section 10 of the Rivers and Harbors Act of 1899, as amended

D. Section 106 of the National Historic Preservation Act of 1966, as amended

1. 36 CFR Part 800: Protection of Historic Properties

E. Section 7 of the Endangered Species Act of 1973, as amended

F. Marine Mammal Protection Act

G. Section 301, 303 and 307 of the Federal Coastal Zone Management Act of 1972, as amended and Section 6217(g) of the Coastal Zone Act Reauthorization Amendments of 1990.

H. Section 2 of the Fish and Wildlife Coordination Act

I. Section 1424(e) of the Safe Drinking Water Act

J. Clean Air Act, as amended.

K. Fish and Wildlife Act of 1956

L. Section 4(f) of the Department of Transportation Act of 1966

M. Other applicable federal regulations

1. Executive Order 11990, Protection of Wetlands

2. Executive Orders 11998 and 121148, Flood Plain Management

3. Boldt Decision on Usual and Accustomed Hunting and Fishing Grounds

N. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)

O. Resource Conservation and Recovery Act (RCRA)

III. STATE LEGISLATION AND REGULATIONS

A. Chapter 43.21C RCW State Environmental Policy Act (SEPA)

1. State Environmental Policy Act Rules WAC 197-11

2. Transportation Commission and Transportation Department State Environmental Policy Act Rules WAC 468-12

B. Chapter 75.20.100 RCW Hydraulic projects or other work - Plans and Specifications - Approval - Criminal Penalty - Emergencies

Hydraulic Code Rules WAC 220-110

C. Chapter 77.16.210 RCW Fishways to be provided and maintained

D. Chapter 77.12.655 RCW Habitat buffer zone for bald eagles - rules

E. Chapter 90.48 RCW Water Pollution Control

Water Quality Standards for Surface Waters of the State of Washington WAC 173-201A

F. Chapter 90.58 RCW Shoreline Management Act of 1971

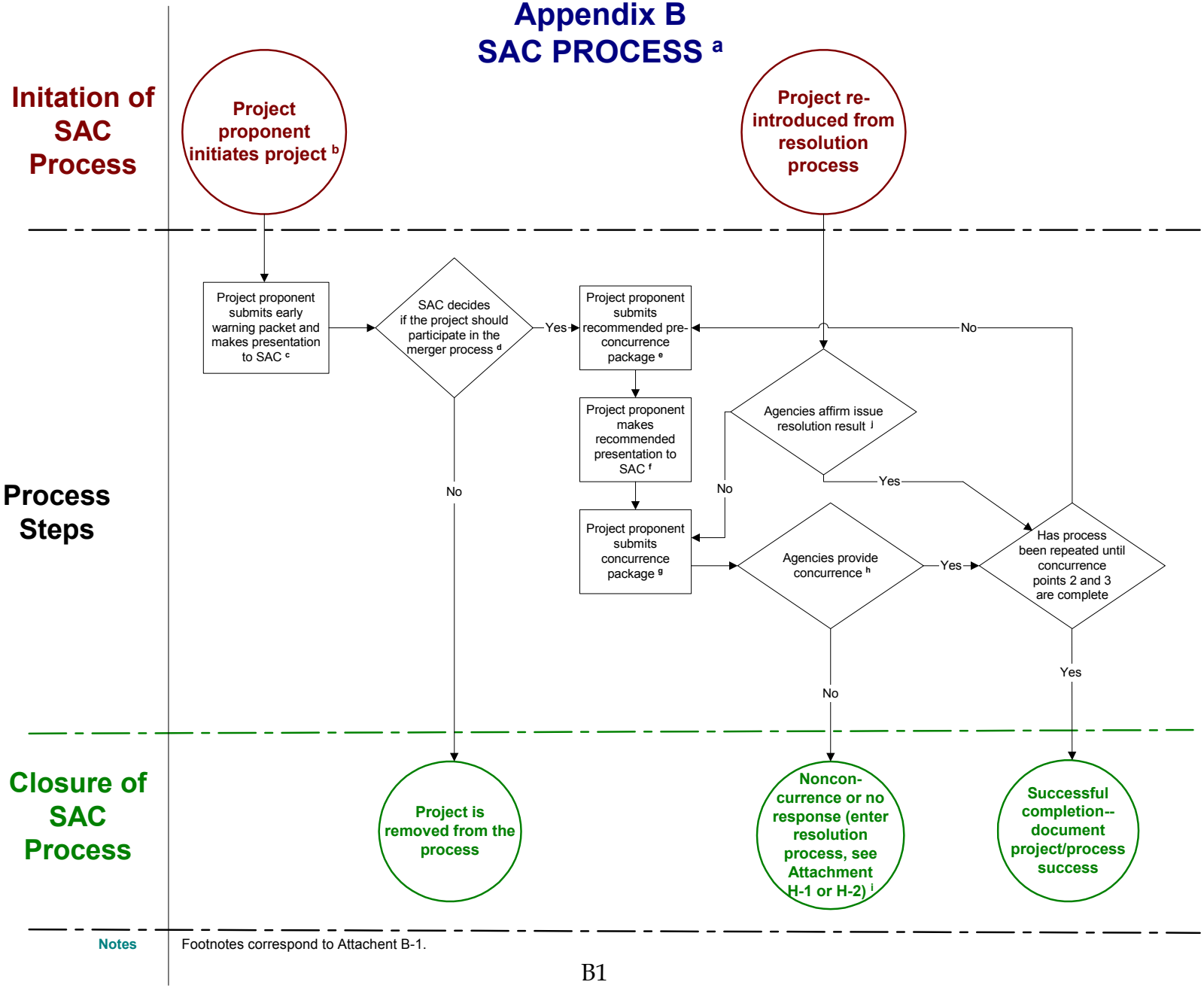
Adoption of Designations of Wetlands Associated with Shorelines of the State WAC 173-22

G. Other applicable state regulations:

1. Governor's Executive Order 81-18, revised in 1985 directs Ecology to be the state coordinator responsible for issuance of all state Water Quality Certifications under Section 401 of the federal Clean Water Act. Under the same Executive Order, Ecology is responsible for the state's response on other activities under the federal Clean Water Act, National Environmental Policy Act (NEPA), and SEPA.

2. Governor's Executive Order 89-10 and 90-04, Protection of Wetlands

Appendix B
SAC PROCESS [a]



Notes Footnotes correspond to Attachent B-1.

APPENDIX B

Attachment B-1

NOTES TO SAC PROCESS FLOWCHART (APPENDIX B)

a. All transportation projects with federal funding and FHWA sponsorship that require an environmental impact statement (EIS) and an anticipated individual Army Corps of Engineers permit are required to enter the Signatory Agency Committee (SAC) process. The SAC retains the ability to decide whether a project that meets these criteria does not warrant involvement in the SAC process due to minimal natural resource impacts.

   Projects that either (1) do not initially appear to meet the criteria for an individual Corps permit following consultations with the Corps, or (2) have been exempted from the SAC process following a presentation to the SAC, but are determined at a later date to qualify for either are not required to enter the SAC process.

b. Project proponent contacts WSDOT's SAC facilitator to get documentation standards and to set presentation timeline. (The documents and presentations that are part of the concurrence process are shown in Attachment B-2.)

c. Thirty days prior to its first presentation to SAC, the project proponent submits early warning packet. This early warning packet may include the information necessary for concurrence point 1 to facilitate the SAC process timeline.

d. Based on the information presented to the SAC at the required first presentation, the SAC will decide if the project warrants participation in the SAC process. This decision will be based on potential environmental impacts as described in "a" above.

e. A pre-concurrence package is not required but is recommended. The pre-concurrence package should be submitted 30 days prior to the project proponent's scheduled concurrence point presentation. The pre-concurrence package will allow SAC members to provide substantive comments at the concurrence point presentation (if the project proponent chooses to make a presentation). By receiving comments from the SAC prior to submittal of the concurrence package, the project proponent has the opportunity to avert nonconcurrence by addressing SAC concerns prior to the formal written request for concurrence.

f. A pre-concurrence presentation is not required but is recommended for the reasons cited for the pre-concurrence package.

g. Project proponent submits formal concurrence package to SAC agencies. Project proponent reminds each agency to submit its response to the concurrence package 14 days prior to the deadline.

h. Agencies have 45 calendar days to respond to concurrence package. An agency may request an extension of 10 working days. If an agency provides comments as part of its response, the project proponent has 45 days to respond to those comments. If

comments will require additional work or time, the project proponent will provide an indication of when a response will be possible.

i. If an agency does not respond within 45 calendar days or 45 calendars days plus a 10-working-day extension, the no-response resolution process begins (see Appendix H of the SAC agreement). If nonconcurrence is provided, the project proponent and the nonconcurring agency(ies) begin the issue resolution process (see Appendix H of the SAC agreement).

j. Upon successful completion of the issue resolution process, the project proponent and nonconcurring agency will each provide the other signatory agencies written documentation that outlines the disputed issues and their resolution. If the project changes are substantial, the project proponent will submit a revised concurrence point package to the SAC immediately. If the project changes appear minimal and non-substantive, the project proponent must verify this determination with the SAC. Within 15 calendar days of the project proponent verifying receipt of the determination request, the SAC will decide if the changes to the project, needed to achieve issue resolution, are significant enough to warrant revisiting the concurrence point.

   Project proponents and nonconcurring agencies are strongly encouraged to consult with other agencies during the issue resolution process to pursue the resolution of nonconcurrence issues without creating new issues of concern for other agencies.

APPENDIX B

Attachment B-2

SAC PROCESS DOCUMENTS AND PRESENTATIONS

The following identifies the materials and presentations that are part of the SAC process. As indicated in the following tables some of the materials or presentations are recommended while others are required.

Responsible Party	Early Warning	Concurrence Point 1	Concurrence Point 2	Concurrence Point 3
Project Proponent	Packet (required)	Pre-Concurrence Packet (recommended)	Pre-Concurrence Packet (recommended)	Pre-Concurrence Packet (recommended)
Project Proponent	Presentation (required)	Presentation (recommended)	Presentation (recommended)	Presentation (recommended)
Project Proponent		Concurrence Request Package (required)	Concurrence Request Package (required)	Concurrence Request Package (required)
Resource Agencies		Concurrence Form (required)	Concurrence Form (required)	Concurrence Form (required)

APPENDIX C

PURPOSE AND NEED

I. INTRODUCTION

"Purpose and need" is a critical element of the transportation planning, project programming, and project development stages because it performs two important functions:

A. It establishes why the sponsoring agency is proposing an action, while at the same time potentially causing environmental impacts, and

B. It provides the basis for selecting reasonable and practicable alternatives for consideration and for analyzing those alternatives in depth, and is an important factor in selecting the preferred alternative.

If the project purpose and need is defined to meet the above two functions, Section 404 requirements related to defining the project purpose will be satisfied.

Under the National Environmental Policy Act (NEPA), "purpose" and "need" are closely linked but subtly different. "Need" may be thought of as the problem and "purpose" as an intention to solve the problem. Purpose and need statements should include increasing specificity as one progresses from transportation planning to project programming to project development. However, it is important to guard against premature specificity that could artificially limit the range of alternatives considered.

Expressions of purpose and need must reflect statutory and regulatory requirements, fiscal and environmental resources, and community concerns. The identification of purpose and need (e.g., degree of congestion used as a goal in planning and designing transportation facilities) is an administrative process of high importance at all stages. Both the purpose and need, and the factors contributing to their identification, must be clearly documented in a manner acceptable to the owner/operator. If the purpose and need deviates from the usual and expected practice (i.e., from project performance and/or design criteria), the owner/operator may be called upon in the future to rely on this documentation to defend against tort liability actions.

For example, the degree of congestion that users are called upon to endure must reflect the available fiscal resources and a balancing of the desires of the users with the environmental/socioeconomic impacts of satisfying these desires. Freeways and arterials should normally be planned and designed to accommodate estimated traffic 20 years after completion of construction at a

level of service at least equal to "C." However, a community-based planning process may select a lower level of service goal in consideration of available fiscal resources and environmental impacts with appropriate documentation.

II. PURPOSE AND NEED FOR THE TRANSPORTATION PLANNING STAGE

The regional transportation planning process, which includes systems, subarea, and corridor planning, should establish transportation goals and objectives for all major transportation investments. The transportation goals and objectives for systems and corridors are analogous to a statement of purpose under NEPA. A regional planning needs statement should clearly document a problem or shortfall in meeting goals and objectives.

Initially, the purpose statement should be a general goal, such as to reduce congestion, improve safety, increase mobility, or reduce pollutant emissions, so as to allow consideration of a range of alternative means to achieve the basic project purpose. The statement of purpose should not be so narrow as to preclude a reasonable range of alternatives from consideration. A narrow initial statement of purpose unnecessarily reduces the decision-makers' flexibility to balance competing requirements.

The need for transportation projects should reflect the regional transportation plan's policies and should be expressed in terms of congestion, safety, or air quality, for example. Need should be quantified, providing a measure of the severity and geographic extent of the problem. For example, need could be expressed as a quantified shortfall in meeting defined regional objectives, such as those for mobility, accident frequency, and air quality.

Documentation should be clearly summarized and referenced within the statement of need. Full documentation (in the form of studies, reports, etc.) should:

A. Include references in the statement of need.

B. Follow the project through the entire programming, development, and construction process.

C. Be readily available upon the request of reviewing agencies (transportation and resource agencies).

Products of the transportation planning process (such as reduction in vehicle-kilometers or vehicle-hours of travel, improvements in travel speeds on the system, reduction in traffic accidents, savings in energy consumption, enhanced

economic development potential, increased tax base, improved access to public facilities, etc.) should be presented to support the need for the transportation investment.

This purpose and need will serve as the basis for establishing the range of alternatives (such as alternative modes and technologies) to be considered during the transportation planning process (that may include corridor or subarea studies). These studies will ultimately determine project design concept and scope for the emissions analysis of the regional transportation plan required by EPA conformity regulations.

Even though a need may be easily established, one should also consider the constraints of meeting this need, such as the presence of Section 4(f) protected property (49 U.S.C. § 303), Waters of the U.S./Waters of the State (see definitions), floodplains, endangered species, and historical properties.

The purpose statement should guide the range of alternatives that will be considered to respond to the established need. For example, responding to the need for access to the downtown of a metropolitan area could generate alternatives such as transit and feeder projects. Likewise, the need to improve highway safety may result in alternatives to reroute truck traffic, improve geometrics, or bypass or widen existing facilities.

III. PURPOSE AND NEED FOR THE PROJECT PROGRAMMING STAGE

When a project identified in a Statewide Multimodal Transportation Plan is about to be proposed for funding, an Environmental Review Summary form will be prepared. The goals, objectives, and policies of the Statewide Mutimodal Transportation Plan will provide the foundation for defining the project purpose and need statement. As information is developed and more is learned, the purpose and need statement will be refined. During this refinement process, some project alternatives could possibly drop out (see Appendix E, Alternatives Analysis /Aquatic Resource Avoidance), thereby permitting a more focused analysis of the remaining alternatives. Project alternatives that are remaining at the project scoping stage will include estimated costs of avoiding, minimizing, and compensating environmental impacts to Waters of the U. S./Waters of the State and associated sensitive species in their estimated project costs, to ensure that sufficient project funding is requested. Need must be defined more specifically at this stage to support project programming.

IV. PURPOSE AND NEED FOR THE PROJECT DEVELOPMENT STAGE

The need for a project must be very specific at this point in the process. Information gathered during the transportation planning and project programming stages should ensure that the project need is well defined. It is critical that the process that identified and quantified this specific need be explained clearly and concisely within the joint NEPA/SEPA or SEPA environmental document, with specific references to previous studies. If the need is modified, sufficient data to document the changed circumstances should be provided.

The purpose and need statement at this stage should provide the framework for considering the avoidance or minimization of environmental impacts, and any enhancement of environmental resources in the project area. Sufficient information should be available at this stage to consider all reasonable alternatives that will satisfy the established need.

V. REFERENCES

40 CFR § 230.10(a) Basic project purpose. (Section 404)

40 CFR § 1502.1 Purpose. (NEPA)

40 CFR § 1502.13 Purpose and Need. (NEPA)

Federal Highway Administration. Guidance Paper: "The Importance of 'Purpose and Need' in Environmental Documents." September 18, 1990.

Federal Highway Administration. Technical Advisory T 6640.8A. October 30, 1987. "Guidance for Preparing and Processing Environmental Documents." Attachment, Section V.D. Pages 13–14.

Yocom, T.G., R.A. Leidy, and C.A. Morris. 1989. "Wetlands Protection Through Impact Avoidance: A Discussion of the 404(b)(1) Alternatives Analysis." *Wetlands*. Vol. 9, No. 2, pages 283–297. (Guidance for preparing alternatives analyses. Focuses on residential, industrial, and commercial projects.)

Intermodal Surface Transportation Efficiency Act of 1991. Pub. L. 102–240—December 18, 1991. Section 3012 Metropolitan Planning (49 U.S.C. app. § 1607(f)).

Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. § 303).

Appendix C

Attachment C-1

EXAMPLES OF FACTORS TO CONSIDER IN DEVELOPING PURPOSE AND NEED

I. TRANSPORTATION PLANNING STAGE

A. Purpose

1. Ensure "purpose" is consistent with transportation goals and objectives (e.g., mobility, safety, capacity, and congestion relief).

2. Ensure "purpose" constitutes a reasonable expenditure of public funds (benefit: cost).

3. Ensure "purpose" is broad enough to allow consideration of a full range of alternative ways to meet the defined need.

B. Need

1. Social Demands or Economic Development

   a. Discuss existing land use plans.
   b. Identify projected land use plan changes.
   c. Identify growth management/control ordinances.

2. Modal Interrelationships

   Discuss project interface with airport, rail, port, and mass transit facilities.

3. Capacity, Transportation Demand, and Safety

   a. Describe existing capacity and level of service.
   b. List regional population/traffic forecasts.
   c. Identify projected capacity needs and level of service.
   d. Identify system safety needs.

4. Air Quality Improvements

   a. Identify transportation control measures (e.g., high occupancy vehicle lanes, ramp metering, bike lanes, park-and-ride facilities).

b. Identify transportation demand management (e.g., rideshare programs, mass transit subsidies).

II. PROJECT PROSPECTUS AND BUDGETING STAGE

A. Any project purpose and need information developed during the transportation planning stage should be carried forward, updated, and refined in the purpose and need discussion for the project scoping and budgeting stage (i.e., social demands or economic development, modal interrelationships, capacity and transportation demand, air quality improvements).

B. The following additional information should be provided:

1. Project Status

   a. Describe the history of the project (adopted corridors, land use plans, regional transportation plans).
   b. Describe the involvement of other agencies, including any previous planning, programming, or project concurrences/nonconcurrences.
   c. Identify the actions pending (e.g., NEPA/SEPA or SEPA documentation, final design, right-of-way acquisition, and permits or required approvals).
   d. Provide the intended project timing.

2. Consistency with Growth Management Act (GMA)

   a. Describe how the project is consistent with local Comprehensive Plans.
   b. Describe how the project is consistent with Regional Transportation Plans.
   c. Describe how the project is consistent with the Statewide Multimodal Transportation Plan.

3. Legislation

   Describe any federal, state, or local government mandates (e.g., demonstration projects, sales tax measure projects).

4. Safety (If relevant to project purpose and need)

   a. Describe the existing accident rate.
   b. Provide existing accident data.
   c. Provide the cost benefit analysis of safety improvement program.

d. Explain how the project will improve safety.

5. Roadway Deficiencies (If relevant to project purpose and need)

    a. Describe operational deficiencies (substandard geometrics, inadequate cross-sections).
    b. Identify structural limitations (load limits).
    c. Discuss maintenance problems.
    d. Explain how the project will correct deficiencies.

6. Environmental Retrofit

    a. Fish passages
    b. Noise Walls
    c. Stormwater

7. Environmental Considerations

    a. Identify whether the project is located in an Air Quality Non-Attainment Area for carbon monoxide, ozone or PM10, and what issues are anticipated.
    b. Identify any known critical/sensitive areas (e.g., aquifer recharge area, wellhead protection area, sole source aquifer, geologic hazard area, wetlands, fish and wildlife habitat).
    c. Identify any historic or archaeological resources.
    d. Identify any flood plains or ways.
    e. Identify any potential sources and type of hazardous or dangerous waste (e.g., clean-up sites).
    f. Identify any potential noise impacts.
    g. Identify any parks, recreation areas, wildlife refuges, or scenic rivers/byways, 4(f) lands.
    h. Identify any resource lands (e.g., agricultural, forest/timber, and mineral).
    I. Identify any streams or tidal waters.
    J. Identify any tribal lands.
    k. Identify water quality of impacted streams or tidal waters/storm water (e.g., Clean Water Act Section 303 (d) Water Quality Limited Water Bodies, CSOs, increased runoff, treatment for existing or new pavement, NPDES general stormwater permit, and NPDES general permit for gravel pits and asphalt batch plants).
    l. Provide any anticipated mitigation measures for each type of impact.
    m. Identify any previous environmental commitments made in the project area (e.g., long-term mitigation monitoring programs and/or deed

restrictions ensuring that the properties within a mitigation area do not become a part of future permit applications).

n. Identify any long-term maintenance commitments proposed for the project (e.g., post-construction activities such as monitoring and replanting of a proposed mitigation site).
o. Identify any relevant land use plans (GMA comprehensive plan, zoning, etc.).
p. Identify any other environmental elements as defined in WAC 197-11-440.

III. PROJECT DEVELOPMENT STAGE

All of the project purpose and need information developed during the project scoping and budgeting stage should be carried forward, updated, and refined in the purpose and need discussion for the project development stage (e.g., project status, legislation, social demands or economic development, modal interrelationships, capacity and transportation demand, safety, roadway deficiencies, air quality improvements and environmental considerations).

Appendix D

ALTERNATIVES ANALYSIS AND AQUATIC RESOURCE AVOIDANCE GUIDANCE FOR TRANSPORTATION PROJECTS

I. INTRODUCTION

The goal of this appendix is to provide guidance on conducting alternatives analyses to meet the requirements of NEPA, SEPA, and Section 404 of the Clean Water Act. This guidance is provided for project sponsors and the planning, regulatory, and resource agencies. It is to be used in the project scoping and budgeting, and the project development stages. Although potential alternatives are evaluated at each of these stages, it is not usually until the last stage (that includes NEPA, SEPA, and 404 permitting) that substantive determinations regarding the adequacy of alternatives development and analysis occur. This appendix provides guidance on how to consider aquatic resource issues and associated sensitive species, including threatened and endangered species throughout both of these stages. Also included for each stage is a summary of existing guidance, and examples to illustrate how the regulatory/resource agencies view practicability.

The basic requirements of NEPA, SEPA and Section 404 of the Clean Water Act are described below.

A. National Environmental Policy Act, State Environmental Policy Act

NEPA regulations require the preparation of an EIS for major federal actions that significantly affect the human environment. (An environmental assessment may need to be prepared to determine whether an impact is significant.) NEPA regulations (40 CFR Parts 1500–1508) require that an EIS rigorously explore and objectively evaluate all reasonable alternatives (See section II.A. below). SEPA regulations require the preparation of an environmental impact statement (EIS) for projects that would have a probable significant adverse impact to the environment.

NEPA requires that mitigation be discussed as a part of each alternative or as a separate alternative applicable to the other alternatives. This does not mean that a compensatory mitigation plan is required for each alternative. Mitigation pursuant to NEPA includes avoiding, minimizing, rectifying, reducing, or eliminating over time, or compensating for the impact(s) (40 CFR § 1508.20). SEPA parallels NEPA in this regard for actions subject to SEPA that will result in probable significant adverse environmental impacts.

B. Section 404 of the Clean Water Act

1. Alternatives Analysis

The Guidelines promulgated under Section 404 of the Clean Water Act specify that a permit can be issued for a discharge of dredged or fill material to waters of the United States only if the discharge is determined to be the least environmentally damaging practicable alternative (LEDPA) (40 CFR § 230.10(a); Section 404 sets out other requirements as well (see section I.B.2. below). When a proposed project requires an individual permit for filling waters of the United States, an analysis of alternatives must be carried out. For this analysis, the LEDPA generally is the practicable alternative that either avoids waters of the U. S. or impacts the smallest area of waters.

For non-water dependent projects (essentially all surface transportation projects) that require filling of wetlands or other special aquatic sites (see definitions), the Guidelines also presume that there are upland alternatives available and that these upland sites are less environmentally damaging. The burden to prove otherwise is on the project sponsor. In particular, the "no action" alternative, and projects that avoid or minimize fill, must be carefully analyzed. An alternative with fewer impacts to aquatic resources than the preferred alternative may be eliminated by demonstrating that it has other overriding severe environmental impacts; i.e., that it is not practicable.

2. Other Requirements of Section 404

a. The Section 404(b)(1) guidelines state at 40 CFR § 230.10:

Although all requirements in § 230.10 (including the alternatives analysis) must be met, the compliance evaluation procedures will vary to reflect the seriousness of the potential for adverse impacts on the aquatic ecosystems posed by specific dredged or fill material discharge activities.

b. In 40 CFR §§ 230.10(b)–(d), the guidelines further state in part that:

(1) No discharge of dredged or fill material shall be permitted if it:

(a) Causes or contributes . . . to violations of any applicable State water quality standard;

(b) Violates any applicable toxic effluent standard or prohibition under Section 307 of the Act;

(c) Jeopardizes the continued existence of species listed as endangered or threatened under the Endangered Species Act of 1973, as amended, or results in likelihood of the destruction or adverse modification of a habitat which is determined by the Secretary of Interior or Commerce, as appropriate, to be a critical habitat under the Endangered Species Act of 1973, as amended. If an exemption has been granted by the Endangered Species Committee, the terms of such exemption shall apply in lieu of this subparagraph;

(d) Violates any requirement imposed . . . to protect any marine sanctuary designated under Title II of the Marine Protection, Research, and Sanctuaries Act of 1972.

(2) . . . no discharge of dredged or fill material shall be permitted which will cause or contribute to significant degradation of the waters of the United States. . . .

(3) . . . no discharge of dredged or fill material shall be permitted unless appropriate and practicable steps have been taken which will minimize potential adverse impacts of the discharge on the aquatic ecosystem. . . .

C. Comparison of NEPA, SEPA, and Section 404

The analysis requirements of NEPA, SEPA, and 404 regarding avoidance are slightly different but fully compatible. A 1990 Memorandum of Agreement between EPA and the COE (reference listed in section III.A. below) recognizes the value of each mitigation component defined under NEPA, and ranks them to ensure that avoidance of impacts occurs first, before efforts to restore or create compensatory habitats. The impact analysis associated with alternatives should be formatted to reflect this priority.

Because a Section 404 permit can be issued only for the LEDPA, Section 404 compliance usually requires a more detailed and specific analysis of the aquatic impacts of each alternative than NEPA or SEPA. Joint NEPA/SEPA or SEPA documents should provide enough information on alternatives to determine if selection of the preferred alternative complies with the 404(b)(1) Guidelines.

II. ALTERNATIVE SELECTION

A. Criteria for Identifying Reasonable Alternatives (NEPA, SEPA)

The evaluation of alternatives must consider a reasonable range of options that could fulfill the project sponsor's purpose and need. Reasonable alternatives are those that "are practical or feasible from the technical and economic standpoint and using common sense, rather than simply desirable from the standpoint of the applicant" (Council on Environmental Quality, 1981; see IV.A. below for reference).

The range of alternatives to be considered should include at minimum: 1) alternative ways of meeting the project sponsor's purpose and need at the same location; 2) alternative locations; and 3) the "no action" alternative. The evaluation of the environmental impacts of all reasonable alternatives must be presented in comparative form to provide a clear basis for choosing among options. If alternatives are eliminated from further analysis, either the environmental document or a separate alternatives analysis must discuss the reasons for elimination.

B. Criteria for Identifying Practicable Alternatives (Section 404)

For transportation projects, generally, an alternative is practicable if it: 1) meets the purpose and need; 2) is available and capable of being done (i.e., it can be accomplished within the financial resources that could reasonably be made available, and it is feasible from the standpoint of technology and logistics); and 3) will not create other unacceptable impacts such as severe operation or safety problems, or serious socioeconomic or environmental impacts.

Alternatives can be eliminated at any stage if they are not "reasonable" (NEPA and SEPA), or if they are not "practicable" (404). However, the reasons for eliminating an alternative from detailed analysis need to be documented and discussed in the document prepared at that stage. Based on this information, the project sponsor must get signatory agencies' concurrence that there are no other less environmentally damaging practicable alternatives than those identified.

C. Consideration of Other Environmental Impacts

The Clean Water Act 404(b)(1) Guidelines require that the practicable alternative that would involve the least adverse impact to aquatic resources

be chosen unless this alternative would have other significant environmental consequences (40 CFR § 230.10(a)). Similarly, Section 4(f) of the Department of Transportation Act allows the transportation agency to reject an alternative as not feasible and prudent if "unacceptable adverse . . . environmental impacts" would result (FHWA, November 15, 1989). Thus, both regulations allow the potential for other significant environmental impacts (such as socioeconomic impacts, hazardous waste sites, etc.) to override either protection of aquatic resources (in the case of Section 404), or preservation of public park and recreation lands, wildlife refuges and historic sites (in the case of Section 4(f)).

Sometimes the only practicable alternatives available would either fill aquatic resources or impact Section 4(f) resources. Thus, in some instances, it may be necessary to accept impacts to one resource in order to avoid or minimize impacts on another resource. The alternatives analysis should reflect the equal consideration of Section 4(f) and Section 404 concerns when evaluating alternatives. However, this equal consideration may change depending on specific project and community circumstances, and the magnitude of the impacts. The alternative that would result in the least overall environmental harm as determined through discussions with regulatory and resource agencies needs to be selected.

An important distinction to keep in mind when evaluating harm to non-aquatic [i.e., 4(f)] resources versus harm to Waters of the U. S./Waters of the State, is that, for the former, the alternatives selection process evaluates reasonable and prudent alternatives based on the "net harm" (after mitigation) of the alternative to 4(f) properties or other environmental resources. In contrast, for almost all Section 404 alternatives analyses, the evaluation of practicable alternatives must consider the impact to Waters of the U. S. that would result from the alternative before compensatory mitigation (see the "Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines" (February 6, 1990) for exceptions to this). This Agreement expressly states that "compensatory mitigation may not be used as a method to reduce environmental impacts in the evaluation of the least environmentally damaging practicable alternative." Therefore, if an alternative exists where the impacts to non-aquatic resources can be practicably mitigated, this alternative should generally be selected over one that would fill Waters of the U. S./Waters of the State.

III. ALTERNATIVES ANALYSIS FOR PROJECT SCOPING AND BUDGETING STAGE

This stage identifies funding needs for project delivery. Efforts should be to set budgets that maximize flexibility when identifying reasonable alternatives. For projects with potential impacts to Waters of the U. S./Waters of the State and associated sensitive species including threatened and endangered species, the project sponsors should identify the full range of reasonable alternatives (including a focused evaluation of avoidance alternatives), their costs (including mitigation), and general environmental implications.

A. Existing Guidance

Army Corps of Engineers. General Regulatory Policies. 33 CFR Part 320 through 330.

Environmental Protection Agency. Guidelines for Specification of Disposal Sites for Dredged or Fill Material. 40 CFR Part 230.

Federal Highway Administration. Timing of Administrative Actions. 23 CFR § 771.113.

Memorandum of Agreement between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation under the Clean Water Act Section 404(b)(1) Guidelines.

B. Early Coordination

The transportation agencies should consult with appropriate resource and regulatory agencies (i.e., the COE, EPA, USFWS, NMFS, Ecology, WDFW, Indian Tribes, federal land management agencies such as the Forest Service or Bureau of Land Management, and local government planning staff) early in the programming stage. This may include inviting the agency representatives to participate on the Technical Advisory Team. Field visits to the project area by project sponsor staff and resource agency personnel are invaluable for identifying resources of particular importance and potential project alternatives. Resource agencies should become involved in refining project-level alternatives and the selection criteria at this stage.

C. Resource Identification

The WSDOT Environmental Review Summary
will address the potential impacts to these resources (see Appendix F, Level of Data Needs/Threshold for Involvement).

D. Initial Selection of Project-Level Alternatives

1. Development of Alternatives: Once the basic project purpose has been agreed upon according to the Purpose and Need Guidance, all reasonable alternatives that meet the basic purpose should be identified, and objectively compared. Any reasonable actions or alignments that avoid adverse impacts to Waters of the U. S./Waters of the State and associated sensitive species (see definitions) should be rigorously examined. If it is not possible to entirely avoid rivers, streams, and other Waters of the U. S./Waters of the State, crossings should be located to minimize impacts to aquatic resources. This could include actions such as shifting the alignment to reduce the footprint of the transportation facility on the aquatic resource.

2. Criteria for Identifying Practicable Alternatives: Project alternatives that are not practicable can be eliminated if the reasons are carefully documented. The following practicability constraints may be used to carry out initial selection of alternatives:

    a. Not meeting the project purpose and need (formulated according to Purpose and Need Guidance).

    b. Excessive cost of construction (including all mitigation).

    c. Severe operational or safety problems.

    d. Unacceptable adverse social, economic, or environmental impacts.

    e. Serious community disruption.

    f. Unsuitable demographics (for mass transportation modes).

    g. Logistical and technical constraints.

4. WSDOT should provide detailed documentation to demonstrate that rejected less-damaging alternatives considered are not practicable.

    This step should be carried out using the selection criteria and process outlined above. Resource and regulatory agencies may disagree with the transportation agencies on what constitutes "excessive," "severe," "unacceptable," or "serious" in determining practicability (see above list of selection criteria). Thus, for projects that will have a major adverse effect on aquatic resources, WSDOT must work closely with the resource

and regulatory agencies to get agreement on the magnitude of constraints needed to render alternatives impracticable.

E. Example

WSDOT is proposing to program a project described by the local MPOs long-range plan. The plan identified the project's purpose as reducing future congestion to at least "satisfactory" (level of service "D") operating conditions. The transportation and programming agencies are able to reasonably identify only approximately $90 million to use for this purpose.

Three project alternatives have been identified by the transportation agency, and are described in the following chart.

HYPOTHETICAL ALTERNATIVES
PROJECT SCOPING AND BUDGETING STAGE

Alternative	**C1**	**C2**	**C3**
Congestion (Level of Service)	fair ("C")	fair–good ("C"–"B")	good ("B")
Cost	$82 million	$87 million	$90 million
Home/Business Displacements	19	10	10
Wetlands (Special Aquatic Site) Impacts	4 hectares (10 acres)	10 hectares (25 acres)	2 hectares (5 acres)
Endangered Species Impacted	none	one	none

At the scoping and budgeting stage, the intent of the project sponsor should be to identify the full range of practicable avoidance or minimization alternatives, all of which should be formally considered at the project development stage.

In this example, all the alternatives are within the range of expected funds and meet the project purpose. However, Alternative C2 would impact the greatest amount of wetlands and adversely affect an endangered species. Other practicable alternatives (C1 and C3) exist that avoid impacts to these resources to a greater extent. Therefore, Alternative C2 is rejected.

F. Documentation of Earlier Analyses

For most mode and location (alignment) alternatives, the initial selection

alternatives analysis probably occurred at the transportation planning stage. If so, the transportation agency must either:

1. Document these earlier decisions as described above under III.D., and discuss how they meet the selection criteria listed at III.D.2.

or

2. Provide evidence that the regulatory and resource agencies already concurred at the planning stage. For example, if one mode would be least damaging to aquatic resources but another mode was chosen during planning, the project sponsor should discuss in detail why the first mode is not practicable.

IV. ALTERNATIVES ANALYSIS FOR PROJECT DEVELOPMENT STAGE

The discussion below addresses how to satisfy the requirements of the Section 404 alternatives analysis in the context of a joint NEPA/SEPA or SEPA document.

A. Existing Guidance

The following list includes guidance on Section 404, NEPA, SEPA, and Section 4(f) of the Department of Transportation Act. A few of the entries are annotated to clarify how they pertain to Section 404 analyses for transportation projects.

Council on Environmental Quality. November 29, 1978. Regulations For Implementing the Procedural Provisions of the National Environmental Policy Act. 40 CFR Parts 1500–1508.

Council on Environmental Quality. March 23, 1981. "Forty Most Asked Questions Concerning CEQs NEPA Regulations."

Environmental Protection Agency. December 24, 1980. Guidelines for Specification of Disposal Sites for Dredged or Fill Material. 40 CFR Part 230.

Environmental Protection Agency and U. S. Army Corps of Engineers. February 6, 1990. "Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines."

Federal Highway Administration. October 5, 1987. "Section 4(f) Policy

Paper." Director, Office of Environmental Policy, Washington D. C.

Federal Highway Administration. October 30, 1987. "Guidance for Preparing and Processing Environmental and Section 4(f) Documents." Director, Office of Environmental Policy, Washington D.C. (Guidance to FHWA field offices and project applicants on preparing and processing environmental and Section 4(f) documents. Good discussion of how alternatives should generally be developed for NEPA [EIS] purposes [Attachment pages 14–17]. Describes procedures to be followed when wetland impacts will occur, and briefly states that the draft EIS should "evaluate alternatives that would avoid these wetlands" [Attachment page 27]. However, it focuses on determining the impact to wetlands and demonstrating compliance with Executive Order 11990, not Section 404; e.g., it lays out a procedure for a "Wetland Only Practicable Alternative Finding" to satisfy the Executive Order.)

Federal Highway Administration. November 15, 1989. "Alternatives Selection Process for Projects Involving Section 4(f) of the DOT Act." Director, Office of Environmental Policy, Washington D. C.

Washington State Department of Ecology. Regulations For Implementing the State Environmental Policy Act Rules WAC 197-11.

Washington State Department of Ecology. Revised 1993. "Ecology's SEPA Handbook."

Washington State Department of Transportation. Regulations for integration of the policies and procedures of SEPA WAC 468-12.

B. Continued Interagency Coordination

It is critical for transportation agencies to coordinate with the resource and regulatory agencies throughout all of the transportation stages. If agencies have not been approached at earlier stages, contact with the resource and regulatory agencies (see list under III.B.) at the project development stage will help determine the depth of the alternatives studies needed based on project scale and impact.

As joint NEPA/SEPA or SEPA documentation is developed, the transportation agency sponsor (or nominal SEPA lead agency), should obtain interagency concurrence on the direction of the alternatives analysis. During the NEPA/SEPA stage, the project sponsor (or nominal SEPA lead agency) should:

1. Follow the steps outlined in the NEPA/SEPA/404 Permit Concurrent Process for EISs in Appendix B and for EAs/CEs in Appendix C of the Agreement. These processes require interagency concurrence on purpose and need, and alternative selection criteria and process at various milestones.

2. Describe the results of this and any other coordination with the agencies in the Alternatives Analysis Report (see below).

C. Preparing the Alternatives Analysis

For projects requiring alternatives analyses, both draft and final versions of the EIS should be prepared in order to facilitate interagency input and concurrence. If a formal report is deemed unnecessary based on agency input, the project sponsor should determine from the agencies which elements of the procedure below need to be informally transmitted. The components of each report are described below.

The 404 Alternatives Analysis should be presented in a separate section of the EA/FONSI or EIS. However, if the outlined information is adequately discussed elsewhere in the document, these discussions can be referenced and summarized in the 404 alternatives analysis.

1. Draft Alternatives Analysis (to be included in the Draft joint NEPA/SEPA or SEPA document: see the NEPA/SEPA–404 Permit Concurrent Process in Appendix B and C of the Agreement).

   a. Proposed Action - Describe the proposed action and explain the project purpose and need (see Purpose and Need in Appendix D of the Agreement).

   b. Resource Identification - Follow the Level of Data Needs / Threshold for Involvement in Appendix G of the Agreement.

   c. Documentation of Alternatives Considered But Rejected During the Initial Analysis

      For most mode and location (alignment) alternatives, the initial selection of alternatives probably occurred at the transportation planning stage. If so, the transportation agency must either:

      (1) Document these earlier decisions as described above at III.D. and

discuss how they meet the selection criteria listed at III.D.2.

or

(2) Provide evidence that the regulatory and resource agencies already concurred at the scoping and budgeting stage.

d. Impacts of Each Alternative - The full range and scope of alternatives need to be presented in comparative form, thus sharply defining the issues and providing a clear basis of choice among options. The impacts on the aquatic resources and associated sensitive species should be discussed for each alternative, such as the amount to be lost, functions and values affected, and indirect impacts (e.g., growth inducement) and cumulative impacts to aquatic resources. Where several alternatives would affect aquatic resources, a summary table comparing the various impacts of each alternative should be prepared.

   For projects that would result in a significant impact to wetlands or sensitive species, the project sponsor will provide more documentation on the impracticability of wetlands minimization or avoidance alternatives than would normally be needed for the purposes of NEPA or SEPA. Project sponsors will justify in detail how the cost, performance, socioeconomic impacts, or other factors make the minimization or avoidance alternative impracticable.

   Project sponsors should also avoid using ambiguous terms such as "slight," "insignificant," "adverse," or "substantial" in the joint NEPA/SEPA or SEPA document when discussing environmental impacts, or project cost or performance. For example, in a draft EIS for a route extension, a less environmentally damaging alternative was eliminated partly because traffic impacts were "unacceptable" to a local city with no further discussion of what this term meant. Existing levels of service in another draft EIS were described simply as "unacceptable" or "adverse" to justify the construction of a new roadway. If such terms are used, they must be quantified with traffic data and modeling assumptions.

e. Example - The project sponsor has identified two practicable alternatives (see table below) for analysis in the draft EIS.

HYPOTHETICAL ALTERNATIVES
PROJECT DEVELOPMENT STAGE

Alternative	C1	C3
Congestion (Level of Service)	fair ("C")	good ("B")
Cost w/o mitigation	$75 million	$87 million
Cost w/est. mitigation	$82 million	$90 million
Home/Business Displacements	19	10
Wetlands (Special Aquatic Site) Impacts	4 hectares (10 acres)	2 hectares (5 acres)
Hazardous Waste Dump Disturbance	none	600 meters (1970 feet) of frontage

It has been discovered that the construction of Alternative C3 would extensively disturb a hazardous waste dump, and seriously harm the underlying aquifer. Thus, even though it would fill less wetlands, Alternative C3 is the more environmentally damaging of the two alternatives. Alternative C1 is therefore the least environmentally damaging practicable alternative, and is designated as the preferred alternative in the final EIS.

f. Minimization of Impacts - Later analyses may consider location alternatives in more detail than the initial analysis and should also consider design variations. At this stage, enough detail on the project is known to make adjustments to avoid wetlands and associated sensitive species. In some cases, temporal measures (e.g., no construction during the breeding season) may avoid or minimize impacts to associated sensitive species.

Transportation agencies should consider, individually or in combination, design variations such as:

(1) Minor alignment shifts.
(2) Retaining structures.
(3) Bridging.
(4) Reduced cut and fill activity.
(5) Changes in profile.
(6) Changes in lane or median width.[1]

[1]Exceptions to mandatory design standards should be identified prior to the completion of the programming document if possible.

(7) Variable slopes (to bring the toe of slope out of sensitive areas).
(8) Specific construction methods.

2. Final Alternatives Analysis - (To be included in the final joint NEPA/SEPA or SEPA document; see the NEPA/SEPA –404 Permit Concurrent Process in the Agreement Appendices B and C)

   The final 404 Alternatives Analysis should:

   a. Summarize the information from the draft Alternatives Analysis.

   and

   b. Clearly demonstrate that alternatives that would avoid aquatic resources to a greater extent than the preferred alternative are not practicable.

      (1) If a practicable alternative that completely avoids aquatic resources exists, it must be selected, unless that alternative has other significant adverse environmental consequences.
      (2) If all the alternatives would result in some aquatic resource loss, the practicable alternative with least damage to aquatic resources must be selected, unless that alternative has other significant adverse environmental consequences. The impacts to aquatic resources for each alternative must be evaluated before compensatory mitigation for this comparison (refer to section II.C. above).

3. Record of Decision (for NEPA EISs only) - A record of decision must identify all alternatives considered and specify the alternative or alternatives that were considered to be environmentally preferable. The record of decision must state whether all practicable means to avoid or minimize environmental harm from the alternative have been adopted, and, if not, why they were not.

4. COE Approval of Alternatives Analysis - The COE, through its permit process, will determine compliance of the alternatives analysis with the Section 404(b)(1) Guidelines and the public interest.

Appendix E

COMPENSATORY MITIGATION

I. INTRODUCTION

The Clean Water Act (Section 404(b)(1) Guidelines) requires that no discharge of fill material be permitted unless appropriate and practicable steps have been taken that will minimize potential adverse impacts of the discharge on the aquatic ecosystem.

Mitigation is an action intended to reduce the effect of a specific activity. Mitigation includes: a) avoiding the impact altogether by not taking a certain action or parts of an action; b) minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or taking affirmative steps to avoid or reduce impacts; c) rectifying the impact by repairing, rehabilitating, or restoring the affected environment; d) reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; e) compensating for the impact by replacing**,** enhancing, or providing substitute resources or environments; and/or f) monitoring the impact and taking appropriate corrective measures (40 CFR § 1508.20 or WAC 197-11-768 of SEPA).

This guidance identifies the procedure for developing compensatory mitigation for unavoidable impacts to aquatic resources (see definitions). It includes mitigation categories (c) and (e) outlined in the previous paragraph. Compensatory mitigation is the replacement of functions and values to the extent practical. As clarified in the "Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines" (February 6, 1990), project sponsors must take a sequential approach to mitigation; first, avoid aquatic impacts, then minimize impacts (see Alternatives Analysis/Aquatic Resource Avoidance in Appendix E of the Agreement). Once the project has been evaluated under this process it will then be possible to explore other forms of mitigation.

II. PROJECT SCOPING AND BUDGETING STAGE

At this phase, the project sponsor needs to describe proposed mitigation, including the expected functions and values anticipated to compensate for unavoidable impacts. Mitigation cost estimates must be incorporated in the various alternatives being considered.

Where indicated appropriate by signatory agencies, programs using a common funding source may be able to develop a mitigation bank for anticipated compensation commitments for several projects.

III. PROJECT DEVELOPMENT STAGE

When the preferred alternative is known and the signatory agencies have concurred, the project sponsor needs to develop a compensatory mitigation plan, including an initial mitigation plan, detailed mitigation plan, and final mitigation plan. The detailed mitigation plan will be developed and included in the final EIS. The detailed mitigation plan becomes the final mitigation plan when comments from agencies and the public are incorporated into the plan.

A. When the preferred alternative is known - After addressing all reasonable efforts to avoid and minimize impacts, the remaining unavoidable impacts can be mitigated by rectifying and/or compensating impacts to the affected environment.

1. Initial Mitigation Plan - The initial mitigation plan is a preliminary document that discusses anticipated or known unavoidable impacts to aquatic resources, and conceptual plans for compensatory mitigation. The focus of the initial mitigation plan will be to identify in general terms what will be considered adequate mitigation for the proposed project. It will be used as guidance in developing the detailed mitigation plan. The initial mitigation plan shall be completed for inclusion with the Draft EIS (DEIS) if the preferred alternative is known. If the preferred alternative is not known at the DEIS stage, the initial mitigation plan shall be included in the preliminary 404 application.

   The initial mitigation plan includes a preliminary investigation of candidate mitigation sites. The initial mitigation plan information can be obtained by site visits, cursory investigations, record searches of existing databases, and by referencing existing plans and land use documents. The purpose is to determine if there are suitable sites to support the mitigation activity being proposed.

   The initial mitigation plan will:

   a. Identify unavoidable impacts to aquatic resources. Descriptions should include:

(1) General wetland descriptions including vegetation communities, hydrology sources, landscape/watershed setting, and functions and values;
(2) Summary table, which shall include the following for each wetland:
    (a) Wetland Identification numbers (keyed to map)
    (b) Cowardin classification (USFWS)
    (c) Washington Department of Ecology (WDOE) categories
    (d) Hectares (acres) impacted

b. Establish goals and develop objectives. Determine scope of mitigation project:

    (1) WDOE category(ies) to be achieved
    (2) Functions and values to be created or enhanced
    (3) Vegetation (community types, suggested species)
    (4) Approximate amount of creation, restoration, enhancement, or preservation in hectares (acres).

c. Identify the timing of mitigation in relation to the proposed transportation project.

d. Identify that the site will be monitored to ensure its success and that it will be preserved in perpetuity.

e. Describe general landscape/watershed setting of potential mitigation sites. These sites can be described separately or grouped and discussed in general terms. Specific sites shall not be identified in this document. The description should include general information on:

    (1) Past, present, and future land uses of candidate sites
    (2) Surrounding land uses
    (3) Landscape position
    (4) Existing vegetation communities
    (5) Soils
    (6) Water resources on or near the site(s)
    (7) Proximity to sensitive or priority habitat areas

Collection of the preceding information will lead to a conclusion as to whether the site(s) possesses favorable characteristics that would make a successful mitigation likely.

2. Detailed Mitigation Plan

The detailed mitigation plan shall be included in the FEIS. The detailed mitigation plan includes specific information about the mitigation that further elaborates upon the ability to successfully execute the mitigation. This plan also serves to identify in specific terms the extent and nature of the mitigation and should include:

a. A copy of the project wetland/biology report

b. Project description and setting

c. Summary of wetland impacts

   (1) Wetland descriptions
   (2) Hectares (acres) of impact
   (3) Plant communities and habitats
   (4) Cowardin classification and WDOE ratings
   (5) Wetland functions and values impacted

d. Proposed Compensatory Mitigation

   (1) Table of mitigation ratios showing required and actual acreage of creation, restoration, enhancement and preservation
   (2) General Goals, including functions to be created, enhanced, restored, or preserved
   (3) Eventual Ecology Category rating to be achieved by the compensatory wetland

e. Pre-construction description of mitigation site(s)

   (1) Location
   (2) Land use - past and present uses on and adjacent to site
   (3) Ecological setting
   (4) Existing vegetation, including problematic species
   (5) Wildlife use
   (6) Soils
   (7) Water resources - streams, wetlands, and groundwater data if applicable

f. Mitigation Design

   (1) Hydrology source(s)
   (2) Grading plan

(3) Soil preparation
(4) Planting plan (wetland and buffer areas)
    (a) Community types
    (b) Species list for each community
(5) Construction and planting schedules

g. Mitigation Success Criteria

Objectives and standards of success for each objective

h. Monitoring Plan

(1) Monitoring schedule
(2) Summary of methods

i. Contingency plans

j. Maintenance of mitigation site and mechanism for protecting in perpetuity

All permitting agencies will receive, and the final 404 application to the COE will include, the detailed mitigation plan for their review. If a draft 404 application is submitted, it shall include the wetland inventory report and initial mitigation plan.

B. Final Environmental Document Development

The final document needs to carry forward the information contained in the previous environmental document. The COE and permitting agencies will review the detailed mitigation plan as part of their normal review at this stage. Before approval of the final environmental document, the signatory agencies will provide concurrence on the detailed mitigation plan and the adequacy of the schedule.

C. Final Design - Final Wetland Mitigation Plan

The final wetland mitigation plan is completed after the detailed mitigation plan has been circulated to the agencies. It incorporates comments from agencies and the public (and commitments made in the FEIS). The final wetland mitigation plan is the document of record for the section 404 permit.

The final wetland mitigation plan must be approved by Ecology, WDFW, and the COE.

IV. ADDITIONAL INFORMATIONAL RESOURCES

Hammer, D. A. 1992. Creating Freshwater Wetlands. Lewis Publishers, Boca Raton. 298p.

"Memorandum of Agreement Between the Environmental Protection Agency and the Department of the Army Concerning the Determination of Mitigation Under the Clean Water Act Section 404(b)(1) Guidelines," February 6, 1990.

Memorandum to the Field between the Environmental Protection Agency and the U. S. Army Corps of Engineers, dated August 23, 1993: "Establishment and Use of Wetland Mitigation Banks in the Clean Water Act Section 404 Regulatory Program."

Working Agreement between The Seattle District, Corps of Engineers, the Washington Division, Federal Highway Administration, and the Washington State Department of Transportation: "Appendix D, WSDOT Guidelines for Wetland Mitigation Plans," July 26, 1993.

Implementing Agreement between the Washington State Department of Transportation and the Washington State Department of Ecology: "Concerning Wetlands Protection & Management," July 1, 1993.

Memorandum of Agreement between Washington State Departments of Ecology, Fish and Wildlife, Transportation, U. S. Army Corps of Engineers, U. S. Environmental Protection Agency, U. S. Fish and Wildlife Service, National Marine Fisheries Service, and the Federal Highway Administration: "Wetland Compensation Bank Program," February 15, 1994.

LEVEL OF DATA NEEDS/THRESHOLD FOR INVOLVEMENT

I. SCOPE OF GUIDANCE

This guidance addresses the interagency process and level of data needed during project scoping, budgeting, and development stages. This guidance does not cover the many other sensitive environmental resources and issues (such as threatened and endangered species not associated with aquatic habitats, recreation land, cultural resources, socioeconomic concerns, and air quality) that must also be addressed at these stages as required by the pertinent laws and regulations.

II. PROJECT SCOPING AND BUDGETING STAGE

A. Agency Involvement

This interagency agreement outlines the activities of each agency. In preparing project scoping, WSDOT regions should use the process outlined in Appendices B and C.

B. Data Needs

1. Information Sources

a. The extent and quality of existing resources should be assessed to determine if avoidance alternatives are needed. To accomplish this, information sources[1] that must be consulted at this stage are:

(1) USFWS National Wetlands Inventory (NWI) maps.

(2) WDFW Priority Habitat Species database.

(3) USFWS and/or NMFS Endangered Species Office for associated sensitive species lists, maps, and/or Habitat Conservation Plans.

(4) Ecology's Section 303 (d) list for "Water Quality Limited Water Bodies."

(5) Site visit by WSDOT.

[1]Aquatic resources may exist but not be depicted in these general information sources; any such occurrences will need to be addressed when identified at a later stage.

b. It is recommended that the WSDOT regional offices also consult the following sources:

(1) Geographic information systems (GIS).

(2) USGS quadrangle maps.

(3) Aerial photographs (check with the COE, USFWS, WDNR, Ecology, general plans, commercial sources).

(4) Natural Resource Conservation Service (NRCS) soil survey maps.

(5) Existing environmental documents.

(6) County and local plans and ordinances applicable to the project.[2]

(7) Individuals, including resource agency and/or academic personnel, who are familiar with the biological resources of the project area.

(8) Any other technical information provided by WSDOT.

2. Products

As part of the project scoping, the project sponsor will provide regulatory and resource agencies with the following:

a. A project description including purpose and need (see Appendix D, Purpose and Need).

b. Maps that show project alternatives and the areal extent of, and impacts to, aquatic resources.

(1) Maps will be no smaller than a 1:1,200 scale, and need not be of publishable quality (e.g., highlighted maps or NWI printouts).

(2) Maps will include information compiled from WSDOT records and recent resource agency data. To prepare the maps, WSDOT will also utilize sensitive species information from USFWS, NMFS,

[2]Examples of plans and ordinances are comprehensive plans, sensitive area ordinances, combined sewer overflow reduction plans, etc.

WDFW, and WDNR for the vicinity of the project. The project sponsor will consider all species associated with Waters of the U. S./Waters of the State whose range includes the project site and whose life requirements are met by the aquatic habitat types that are present within the survey area. Potential impacts to associated sensitive species need to be identified as accurately as possible (given that less detailed information is available at this stage).

(3) The maps of special aquatic sites and other Waters of the U. S./Waters of the State will be checked in the field (a windshield survey is adequate). Impacts to Waters of the U. S./Waters of the State should be known to approximately 0.4 hectare (one acre).

c. A discussion of reasonable alternatives, including an evaluation of avoidance alternatives, their estimated costs (including potential mitigation), and general environmental implications (see Appendix E, Alternatives Analysis/Aquatic Resource Avoidance).

d. A preliminary impacts comparison (i.e., table or matrix) based on the site visit showing the relative impacts of the project alternatives on:

(1) The quantity (hectares and acres) and general functions and values of Waters of the U. S./Waters of the State (showing special aquatic sites separately).
(2) The quantity (hectares and acres) of associated sensitive species habitat.
(3) The magnitude of impacts to other environmental resources**.**

e. A discussion of cumulative impacts on aquatic resources.

III. PROJECT DEVELOPMENT STAGE

A. Agency Involvement

1. This interagency agreement outlines the activities of each agency. Project sponsors preparing EISs should use the process in the NEPA, SEPA,[3] and Section 404 EIS Concurrent Process outlined in Appendix B. For EAs or CEs, the project sponsor should refer to the NEPA, SEPA, and Section 404 EA/CE Concurrent Process outlined in Appendix C.

[3]Refer to Implementing Agreement between WSDOT & Ecology Concerning Wetlands Protection & Management, July 1, 1993.

2. If sensitive species are identified in the project area, the project sponsor will coordinate with the USFWS, NMFS, and the WDFW to identify the full extent of the sensitive species habitat, the potential project impacts, and the appropriate avoidance, minimization, and compensatory mitigation measures.[4]

B. Data Needs

Data requirements for the documents referenced in this interagency agreement are described below.

1. EA Development **-** If an EA is the appropriate environmental document, the following data will be provided to signatory agencies to assist in EA development.

   a. A detailed project description.

   b. A detailed purpose and need statement (see Appendix D, Purpose and Need).

   c. A draft Alternatives Analysis as described in Appendix E, Alternatives Analysis/Aquatic Resource Avoidance.

   d. Preliminary conclusions regarding significance of anticipated impacts.

   e. Information on aquatic sites and other Waters of the U. S./Waters of the State (if applicable):

      (1) A delineation[5] of all wetlands and other Waters of the U. S./Waters of the State that could be affected by the proposed project will be submitted to the COE at the time of application. For projects that impact wetlands located on agricultural lands, the delineation will be submitted to NRCS.
      (2) A detailed description of the site including a list of plant and animal species noted during field investigations, a list of habitat types, a list of appropriate indicator species and their status, and a table showing the amount of each wetland in hectares and acres.
      (3) A discussion of the affected functions and values. The assessment should determine which functions are performed by

[4]Refer to 50 CFR Part 402 for the procedural regulations governing interagency cooperation under section 7 of the Endangered Species Act of 1973, as amended.

[5]The preferred alternative is the only alternative that is delineated.

wetland/waters, the value of those functions, and how the project will affect the continued performance of the identified functions.

(4) A detailed description of project impacts (direct, indirect, and cumulative), including the type of impact (e.g., habitat removal, fragmentation, introduction of exotic species) and its magnitude.

(5) A description of proposed mitigation measures and a initial mitigation plan of candidate mitigation sites (see Appendix F, Compensatory Mitigation).

f. The results of formal or informal Section 7 consultation and concurrence letters (if applicable).

2. Notice of Intent (NOI) (EISs only)

The NOI should summarize the following information from the project definition and budgeting stage:

a. Project description

b. Purpose and Need (see Appendix D, Purpose and Need).

c. Potential alternatives and their major issues related to environmental resources (see Appendix E, Alternatives Analysis/Aquatic Resource Avoidance).

d. Proposed scoping process, schedule, and contact person(s).

3. EIS Scoping Notice - If an EIS is the appropriate environmental document, the following scoping information will be provided to regulatory and resource agencies to assist them in scoping the EIS.

The "scoping notice information" (see Appendix B, NEPA, SEPA, and 404 Permit Concurrent Process) to be included in the project sponsor invitation letter to the regulatory and resource agencies is the information outlined in II.B.2., above. In particular, it should include a discussion of purpose and need (see Appendix D, Purpose and Need), preliminary criteria for selecting the range of alternatives, and the preliminary project alternatives to be evaluated in the draft EIS (see Appendix E, Alternatives Analysis/Aquatic Resource Avoidance). This information must be developed at this stage if not done earlier.

4. Draft EIS Development

a. The project sponsor should refine the purpose and need and alternatives analysis as outlined in Appendix D, Purpose and Need and Appendix E, Alternatives Analysis/Aquatic Resource Avoidance for the Project Development stage. The project sponsor should incorporate any information obtained during the scoping process on Waters of the U. S./Waters of the State and associated sensitive species.

b. The project sponsor should include the following information on special aquatic sites and other Waters of the U. S./Waters of the State in the draft EIS:

(1) A delineation[6] of all wetlands and other Waters of the U. S./Waters of the State that could be affected by the proposed project (provided to the COE or NRCS as appropriate [separately from the EIS]).
(2) A detailed description of the site including a list of plant and animal species noted during field investigations, a list of habitat types, a list of appropriate indicator species and their status, and a table showing the amount of each wetland in hectares and acres.
(3) A detailed assessment of project impacts on special aquatic sites and other Waters of the U. S./Waters of the State as follows:

(a) A discussion of the affected functions and values. The assessment should determine which functions are performed by the wetland/waters, the value of those functions, and how the project will affect the continued performance of the identified functions.
(b) A detailed description of project impacts (direct, indirect, and cumulative), including the type of impact (e.g., habitat removal, fragmentation, introduction of exotic species) and its magnitude. These effects must be evaluated in the appropriate local or regional context. In most cases, a regional context will be appropriate. However, in some instances it may be more reasonable to evaluate the resource in a local context. For example, an aquatic habitat-may be well represented in the region, but extremely scarce locally.

(4) A initial mitigation plan of candidate mitigation sites (see Appendix F, Compensatory Mitigation).

[6]The preferred alternative is the only alternative that is delineated.

c. If associated threatened or endangered or sensitive species will be affected, the draft EIS will also contain the following information:

(1) The biological assessment as described under A., Agency Involvement.
(2) The results of formal or informal Section 7 consultation and concurrence letters (if applicable).

d. When the project sponsor is evaluating significant adverse effects in an EIS and there are gaps in relevant information, or scientific uncertainty, the project sponsor will make clear that such information is lacking or that uncertainty exists by following the procedures outlined in 40 CFR 1502.22.

5. The 404 permit application package will contain:

a. A completed Section 404 permit application form and appropriate drawings suitable for public notice.

b. Information from the environmental document that provides:

(1) A description of the project and its alternatives.
(2) Discussions of the impacts to aquatic resources and the proposed mitigation.
(3) A draft Section 404(b)(1) alternatives analysis**.**
(4) Wetland delineation.

6. Final EIS/FONSI

a. The final document will include:

(1) A final alternatives analysis identifying the NEPA and SEPA preferred/404 least environmentally damaging practicable alternative (see Appendix E, Alternatives Analysis/Aquatic Resource Avoidance).
(2) Identification of the apparent final mitigation plan (see Appendix F, Compensatory Mitigation).

Appendix G

SIGNATORY AGENCIES' STATUTORY AUTHORITIES

Agency Providing Concurrence	Statutory Authority*
National Marine Fisheries Service (NMFS)	• Endangered Species Act • Fish and Wildlife Coordination Act • Magnuson-Stevens Fisheries Conservation and Management Act These statutory authorities apply to marine species, fisheries, and anadromous fish.
U.S. Army Corps of Engineers (COE)	• Section 404 of the Clean Water Act (waters of the U.S.) • Section 10 of Rivers and Harbors Act These statutory authorities apply to dredging and filling waters of the U.S., including non-isolated wetlands, and navigation in the waters of U.S., and, as related to natural resources, mitigation for impacts, alternative analyses for impact avoidance, and contaminant issues.
U.S. Environmental Protection Agency (EPA)	• Clean Water Act – permits under Sections 404 and 401; oversees permit decisions administered by the COE and Ecology • Clean Air Act – Section 309 of the Clean Air Act directs EPA to review and comment in writing on the environmental impacts associated with all federal actions • Safe Drinking Water Act • National Environmental Policy Act (NEPA) compliance – review and comment on the notice of intent, scoping notice, draft and final environmental impact statement These statutory authorities apply to NEPA stewardship and overview of natural environment and human (built) environment issues, and, as related to natural resources, mitigation for impacts, alternative analyses for impact avoidance, and contaminant issues.
U.S. Fish and Wildlife Service (USFWS)	• Endangered Species Act • Fish and Wildlife Coordination Act • Migratory Bird Treaty Act These statutory authorities apply to terrestrial, aquatic, and plant species and their habitat, and mitigation for natural resource impacts.

Appendix G

Agency Providing Concurrence	Statutory Authority*
Washington Department of Ecology (Ecology)	• State Environmental Policy Act (SEPA) • Clean Water Act –Sections 401(water quality certification) and 402 (NPDES permits) and state water quality laws and regulations • Coastal Zone Management Act • Shoreline Management Act (SMA) • Clean Air Act (CAA) • Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) • Resource Conservation and Recovery Act (RCRA) • Model Toxics Control Act (MTCA) • RCW 90.48 The SEPA statutory authorities apply to SEPA stewardship and implementation, and overview of natural environment and human (built) environment issues. CERCLA, RCRA, and MTCA apply to contaminated sediment and soil clean up requirements. The other authorities listed apply to maintaining and protecting all beneficial uses of the soil, air, and waters of the state. Ecology has permitting jurisdiction for placement of fill or other discharges (including stormwater) and some construction activities in shoreline and coastal areas, and all wetlands and waters of the state including isolated wetlands. Ecology administers the federal Coastal Zone Management Act, which requires federal applicants or agencies to certify that their projects in Washington's coastal zone are consistent with Washington's Coastal Zone Management Program (WCZMP); these projects must comply with the SMA, CWA, CAA, SEPA, and several other state statutes.
Washington Department of Fish and Wildlife (WDFW)	• Title 77 of RCW – RCW 7712 – Wildlife issues – RCW 7715 – State Endangered Fish and Wildlife – RCW 7716 – Fishways – RCW 7755 - Hydraulic Code • Fish and Wildlife Coordination Act These statutory authorities apply to terrestrial and aquatic species and their habitats, and mitigation for resource impacts.
* This list of statutory authorities should not be considered comprehensive.	

Appendix H

ISSUE RESOLUTION PROCESS

I. INTRODUCTION

The purpose of this issue resolution process is to provide a means to resolve disagreements between signatory agencies. The intention is to expeditiously resolve issues at the lowest level of the organizations through consensus. Alternative issue resolution processes (e.g., facilitation or mediation) can be used.

II. ISSUE RESOLUTION PROCESS TRIGGERS

A. Written nonconcurrence at any of the three concurrence points (commenting agency needs to provide detailed reason(s) for its nonconcurrence).

B. A disagreement on the interpretation of the Signatory Agency Committee (SAC) Agreement (any signature agency can initiate this issue resolution process).

C. Lack of a timely response to any concurrence point, as specified in Section VI of the agreement (initiated by the project proponent for a signature agency's lack of response to a concurrence point, or initiated by a commenting agency for a lack of a timely response to a nonconcurrence point by the project proponent).

III. ISSUE RESOLUTION PROCESSES AND TIMELINES

A. Nonconcurrence

The following steps will be used to resolve issues identified as a result of a nonconcurrence:

1. Within 7 calendar days of receiving a nonconcurrence, the project proponent will notify the nonconcurring agency(ies) that the issue resolution process is being initiated and that they need to consult, either to resolve issues or to determine how concerns can be best addressed.

2. Within 10 calendar days of step 1, the project proponent and each nonconcurring agency will consult. If the issue(s) cannot be resolved, the project proponent and nonconcurring agency will proceed to step 3. If the issue(s) can be resolved, the project proponent and nonconcurring agency will each provide the other SAC agencies written documentation that outlines the issues and their resolution. If the project changes are

substantial, the project proponent will submit a revised concurrence point package to the SAC immediately. If the project changes appear minimal and non-substantive, the project proponent must verify this determination with SAC. Within 15 calendar days of the project proponent verifying receipt of the determination request, the SAC will decide if the changes to the project, needed to achieve issue resolution, are significant enough to warrant revisiting the concurrence point.

Project proponents and nonconcurring agencies are strongly encouraged to consult with other agencies during the issue resolution process to pursue the resolution of nonconcurrence issues without creating new issues of concern for other agencies.

Depending on the signatory agencies involved in the issue resolution process, the following people or their designees will participate at this step:

- FHWA: Area Engineer
- EPA: Project staff
- COE: Transportation Team Leader
- USFWS: Fish and Wildlife Biologist (project lead)
- NMFS: Fish Biologist (project staff)
- WSDOT: Regional staff
- WDFW: Regulatory Services Section Manager
- Ecology: SAC representative

3. Within 10 calendar days of step 2 (if resolution is not reached), the project proponent and each nonconcurring agency will develop and exchange questions or comments to be addressed in white papers and identify the change that is needed for issue resolution.

4. Within 30 calendar days of step 3, white papers will be developed and exchanged addressing each question or comment submitted and detailing concerns, and a meeting will be held with the next level of supervisors. At this step, either the project proponent or a nonconcurring agency may request a mediator. The mediator may be a specialist from one of the SAC agencies or a contractor (contingent upon a project's budget).

   Depending on the signatory agencies involved in the issue resolution process, the following people or their designees will participate at this step:

   - FHWA: Team Leader

- EPA: Aquatic Resource Unit Manager and Geographic Resource Unit Manager
- COE: Regulatory Branch Manager
- USFWS: Division Manager
- NMFS: Geographic Team Leader/Transportation Team Leader
- WSDOT: Environmental Affairs Office Director
- WDFW: Assistant Director of Habitat Division
- Ecology: Shorelands and Environmental Assistance Program Manager

If the issues cannot be resolved by project and agency staff within the time allotted, the project proponent and nonconcurring agency will proceed to step 5.

If the issue(s) can be resolved, the project proponent and nonconcurring agency will each provide the other SAC agencies with written documentation that outlines the issues and their resolution. If the project changes are substantial, the project proponent will submit a revised concurrence point package to the SAC immediately. If the project changes appear minimal and non-substantive, the project proponent must verify this determination with SAC. Within 15 calendar days of the project proponent verifying receipt of the determination request, the SAC will decide if the changes to the project, needed to achieve issue resolution, are significant enough to warrant revisiting the concurrence point.

Project proponents and nonconcurring agencies are strongly encouraged to consult with other agencies during the issue resolution process to pursue the resolution of nonconcurrence issues without creating new issues of concern for other agencies.

5. If resolution cannot be achieved at step 4, a meeting will be held with the signators of the agreement or their designees. This meeting will occur within 45 calendar days of the exchange of white papers (step 4). (It is presumed that the signators will reach an agreement on how to resolve the disputed issues.)

   When the issue(s) is resolved, the project proponent and nonconcurring agency will each provide the other SAC agencies with written documentation that outlines the issues and their resolution. If the project changes are substantial, the project proponent will submit a revised concurrence point package to the SAC immediately. If the project changes appear minimal and non-substantive, the project proponent must verify this determination with SAC. Within 15 calendar days of the project proponent verifying receipt of the determination request, the SAC will

decide if the changes to the project, needed to achieve issue resolution, are significant enough to warrant revisiting the concurrence point.

Project proponents and nonconcurring agencies are strongly encouraged to consult with other agencies during the issue resolution process to pursue the resolution of nonconcurrence issues without creating new issues of concern for other agencies.

Depending on the signatory agencies involved in the issue resolution process, the following people or their designees will participate at this step:

- FHWA: Division Administrator
- EPA: Ecosystems and Communities Office Director
- COE: District Engineer
- USFWS: Manager/Field Supervisor of affected Field Office
- NMFS: Washington Habitat Branch Chief
- WSDOT: Secretary or Assistant Secretary
- WDFW: Director of Fish and Wildlife
- Ecology: Deputy Director

These steps are diagrammed in Attachment H-1.

B. Disagreement on Interpretation of the SAC Agreement

The process to resolve disagreements on the interpretation of the SAC agreement will be the same as the one described in Section A above, starting at step 2. The initiating agency will be the process owner.

C. Lack of a Timely Response on a Concurrence Point

1. Project proponent immediately notifies non-responding agency after the 45-day concurrence period has expired, or 45 days plus 10 working days if an extension has been granted. This will be done by mail or fax.

   At the same time, the project proponent sends a letter requesting the non-responding agency to commit to a date for providing a response to the concurrence package.

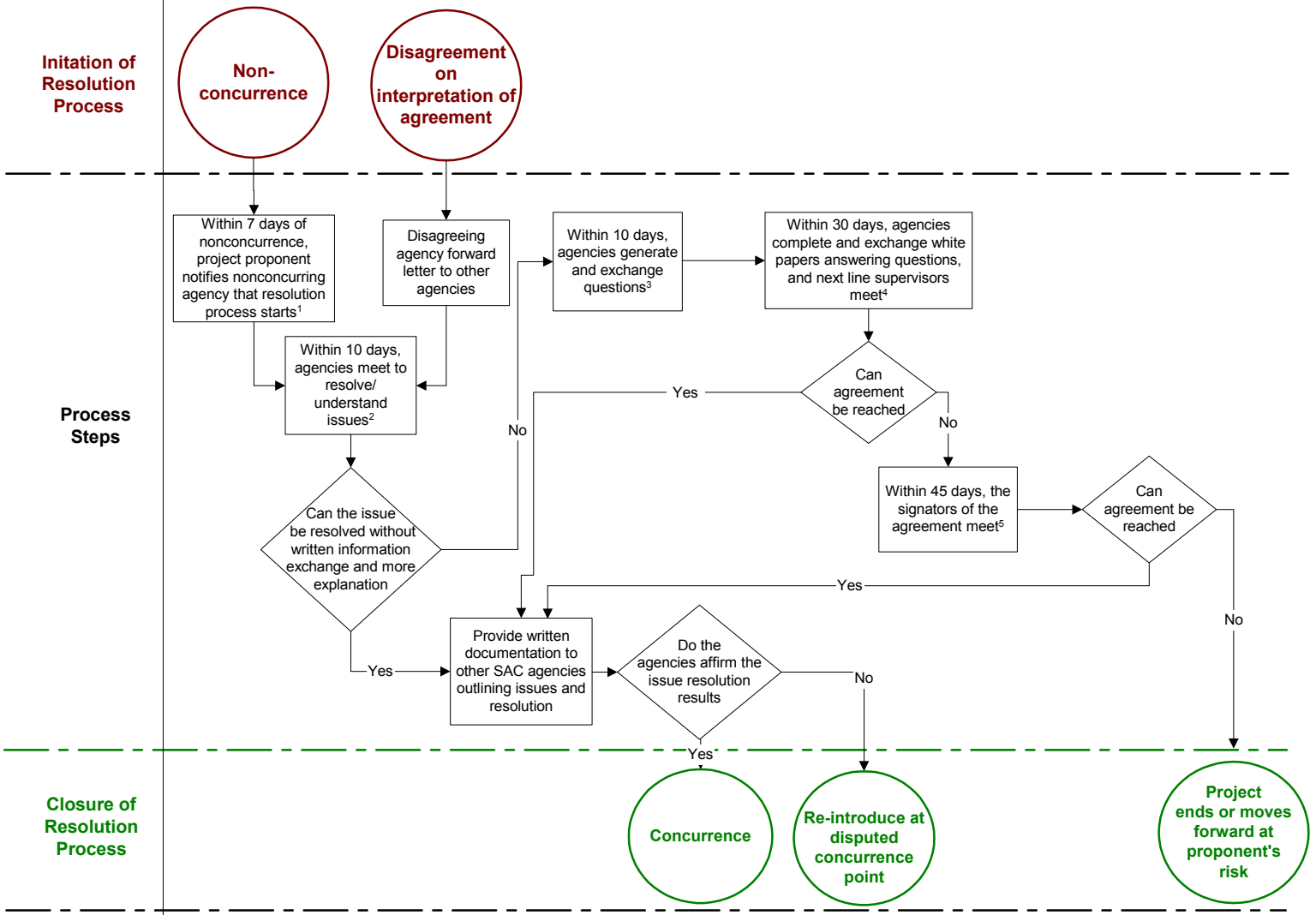
2. If a negotiated agreement is not reached within 5 calendar days, the issue resolution process will be moved to the next line of supervisors.

Depending on the signatory agencies involved in the issue resolution process, the following people or their designees will participate at this step:

- FHWA: Team Leader
- EPA: Aquatic Resource Unit Manager and Geographic Resource Unit Manager
- COE: Regulatory Branch Manager
- USFWS: Division Manager
- NMFS: Geographic Team Leader/Transportation Team Leader
- WSDOT: Environmental Affairs Office Director
- WDFW: Assistant Director of Habitat Division
- Ecology: Shorelands and Environmental Assistance Program Manager

These steps are diagrammed in Attachment H-2.

Attachment H-1
ISSUE RESOLUTION PROCESS: NONCONCURRENCE OR INTERPRETATION DISPUTE

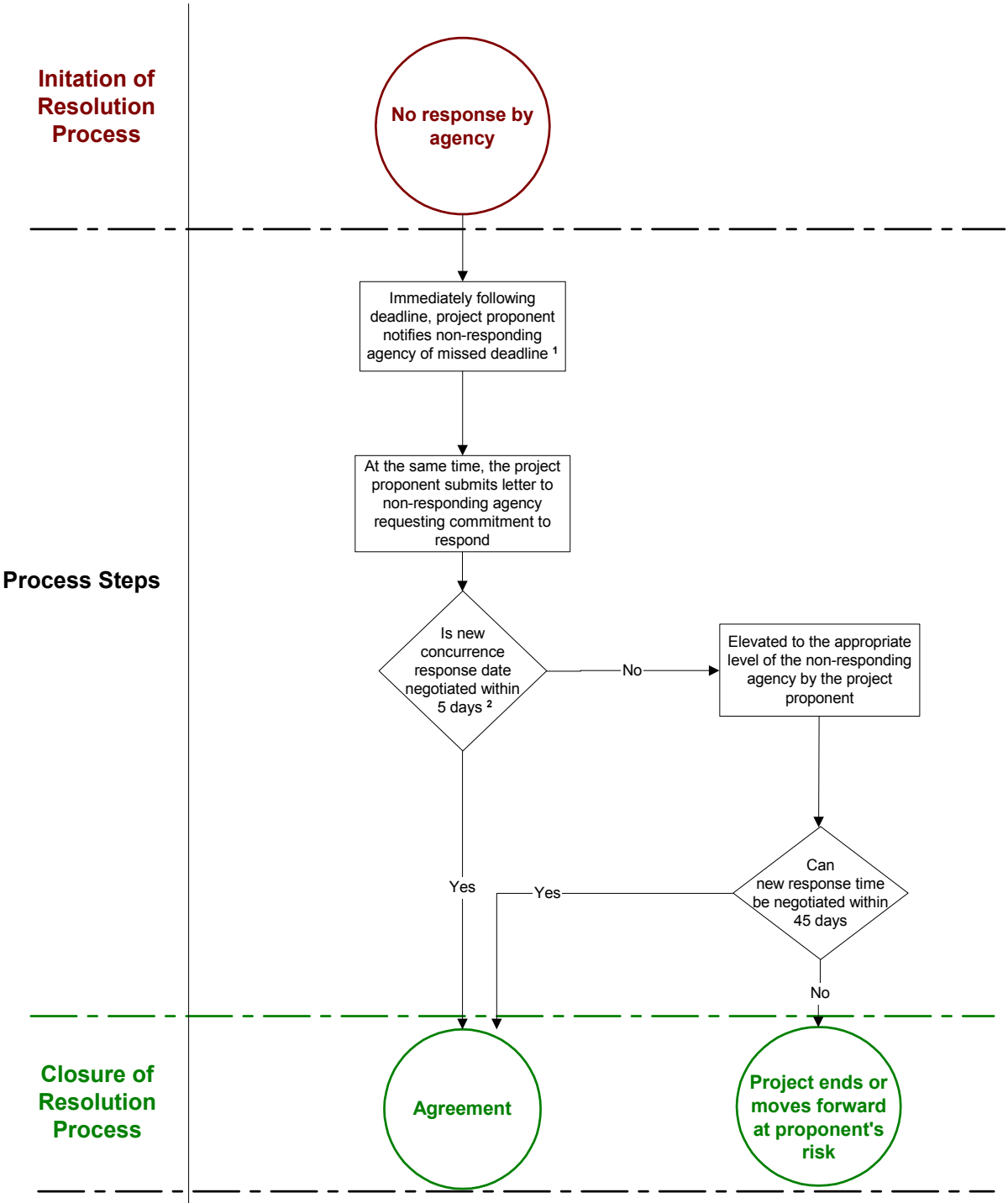


Notes

Footnotes correspond to Part III, Section A of Appendix H.

All calendar days unless otherwise noted. Time periods start from previous numbered step.

Attachment H-2
ISSUE RESOLUTION PROCESS: LACK OF TIMELY RESPONSE



Notes

Footnotes correspond to Part III, Section C of Appendix H.

All calendar days unless otherwise noted.

Appendix I

TENETS OF PARTICIPATION

All signatory agencies agree to:

- Devote sufficient resources to understand the intent and procedures of the SAC agreement.
- Be committed to the SAC process and timelines.
- Provide open and honest participation.
- Ensure adequate agency staff are available for full participation in the SAC process.

Appendix J

RESPONSIBILITIES OF SIGNATORY AGENCIES

RESPONSIBILITIES

For projects that have the potential of having high impacts on the aquatic environment, each signatory agency will (to the extent feasible):

A. Participate in the NEPA, SEPA, Section 404 of the Clean Water Act process at the earliest possible time.

B. Assist in identifying interest groups (affected agencies and agencies with jurisdiction by law or special expertise and interest).

C. Respond within 45 calendar days to request to become a cooperating agency. The response letter shall indicate the anticipated level of the signatory agency's responsibilities as a cooperating agency.

D. Participate in the scoping process as resources allow. Signatory agencies will attend scoping meetings, highway design alternatives meetings, coordination meetings, and joint field reviews, as appropriate.

E. Provide information and/or technical assistance on issues within the agency's jurisdiction or area of expertise. The signatory agency will specify in its comments whether it needs additional information to fulfill other applicable environmental reviews or consultation requirements and what information it needs. In particular, it shall specify any additional information it needs to comment adequately on the draft environmental document analysis of site specific effects associated with the granting or approving by that signatory agency of necessary permits, licenses, or entitlements. Signatory agencies will signify their concurrence or nonconcurrence at the completion of each concurrence point. A signatory agency must respond to requests for concurrence within 45 calendar days. See concurrence points in Appendix B of the SAC agreement.

F. When avoidance of impacts to an aquatic resource is not practicable, agencies with jurisdiction by law or special expertise will assist the Lead Agency in determining appropriate and practicable mitigation, including "all practicable measures to minimize harm".[1] If the agency determines that it does not have

[1]It is not intended that the agency with jurisdiction by law or special expertise design a mitigation plan for the Lead Agency. It is intended that the agency cooperate with the Lead Agency using its expertise and knowledge of the regulations.

enough information to make a recommendation on mitigation measures, it will comment to that effect. If the project impacts are so substantial that permits would probably be denied, the signatory agencies agree to advise the project sponsor to modify the project to reduce impacts. If this is not effective, signatory agencies agree to implement conflict resolution to see if the project could be appropriately modified. See Conflict Resolution in section VII of the agreement.

G. Participate in joint public involvement activities, as appropriate.[2]

H. As necessary, adopt the final environmental document if, after an independent review of the document, the signatory agency concludes that the document satisfies NEPA/SEPA and other requirements for its approvals, permits, licenses and/or clearances on the proposed action (appropriate only for those agencies with jurisdiction by law).

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[2]Other agencies may be able to satisfy their public involvement requirements by participating in the public involvement process during the preparation of the environmental document.

Appendix K

RESPONSIBILITIES OF THE LEAD AGENCIES

I. INTRODUCTION

The "Lead Agencies" are responsible for NEPA and SEPA compliance for transportation projects. FHWA will be the federal lead agency responsible if FHWA funding or approval is required. The lead agency for SEPA projects is dictated by SEPA; where WSDOT is the project proponent it is normally also the lead agency.

II. RESPONSIBILITIES

A. Invite any agency with jurisdiction or expertise to become a cooperating agency. FHWA (or other lead federal agency) will request the participation of any federal agency for joint (FHWA/WSDOT) NEPA/SEPA projects. WSDOT (or the SEPA lead agencies) will request the participation of any state agency for joint NEPA/SEPA or SEPA projects. Provide a detailed project description and enough information for the agencies to estimate what impact the project would have on resources under their jurisdiction or within their area of expertise. The letter of invitation should outline the proposed level of involvement expected of the cooperating agency and explain whether the request is being made because of the agency's special expertise or its legal jurisdiction.

   A request that the COE be a cooperating agency must originate from FHWA. The request must include enough detail for the COE to determine what impact the project has within the COE jurisdiction.

B. Invite cooperating agencies and signatory agencies to scoping and coordination meetings as early as possible in the project development process.

C. Obtain concurrence from cooperating agencies and signatory agencies on description of project purpose and need, and criteria for alternative selection.

D. Prepare summaries of all meetings, including all agreements reached and discussion of pending issues, and distribute the summaries to all cooperating agencies and signatory agencies.

E. Determine whether it would be desirable to ask the cooperating agencies and signatory agencies to perform and/or use any environmental analysis work or write a portion of the environmental document.

F. Conduct highway design alternatives meetings and field reviews if necessary.

G. Include in the pre-draft and subsequent environmental documents, to the greatest extent practicable, the information needed by agencies with jurisdiction by law to grant required permits, certifications, or approvals (including the information needed to initiate/perform the Section 404b(1) public interest review/evaluation). The pre-draft document should also summarize existing plans (for example: land use, Growth Management Plans, and shoreline plans) and zoning regulations applicable to the alternatives being considered, and explain how the alternatives are consistent and inconsistent with them. The pre-draft should identify the preferred alternative, if known.

H. Give each cooperating agency and signatory agency the opportunity to review the pre-draft and pre-final environmental document and to express their views on the adequacy of the document, alternatives considered, anticipated impacts, and project compliance with other applicable policies and statutes.

I. Obtain concurrence from the cooperating agencies and signatory agencies on the project alternatives that were evaluated in the pre-draft and the preliminary preferred alternative, if known.

J. Prepare and submit applications for appropriate permits.

K. Consider conducting joint public involvement activities with cooperating agencies and signatory agencies.

L. Obtain concurrence from the cooperating agencies and signatory agencies on the selected preferred alternative. Include in the final environmental document the information needed by the cooperating agencies to fulfill their responsibilities and requirements on approvals, permits, certifications and/or clearances for the proposed action.

Appendix L

MONITORING AND EVALUATION

I. TEAM MEMBERSHIP

The SAC agreement will be monitored and evaluated by a team made up of one representative from each signatory agency. FHWA and WSDOT will co-chair the team and coordinate the meetings.

II. FREQUENCY AND SCOPE OF MEETINGS

A. This team shall hold annual meetings to consider and recommend:

1. Minor editorial correction to the agreement.

2. More substantive proposals for improvement in the agreement process.

3. How to monitor and measure the success of the agreement process.

4. Changes to the agreement process to reflect monitoring results.

5. Continuation of monitoring and evaluation.

III. PROCESS/AGREEMENT CHANGES

A. The monitoring and evaluation team will:

1. Present minor revisions to the agreement to their agencies for concurrence.

or

2. For more substantive issues, recommend a process for obtaining the consensus of all signatories to revise the agreement. This may require reconvening the interagency body that developed the agreement, and/or initiating the issue resolution process at the signatory level.

IV. REPORTING

The team will report to the signatory agencies on implementation of the SAC agreement each year in January.

Appendix M

ACRONYMS AND ABBREVIATIONS

4(f)	Section 4(f) of the Department of Transportation Act of 1966 (49 U.S.C. § 303)
7	Section 7 of the Endangered Species Act
10	Section 10 of the Rivers and Harbors Act of 1989
404	Section 404 of the Clean Water Act
771	23 CFR Part 771, Environmental Impact and Related Procedures (FHWA)
AADT	Annual average daily traffic
ADT	Average daily traffic
BMPs	Best management practices
CE	Categorical exclusion (NEPA)
CFR	Code of Federal Regulations
COE	U.S. Army Corps of Engineers
CWA	Clean Water Act (also known as the Federal Water Pollution Control Act [FWPCA]) Pub.L. 92–500, as amended by Pub.L. 95–217, 33 U.S.C. 1251, *et seq*.
DEIS	Draft environmental impact statement
DNS	Determination of nonsignificance
DS	Determination of significance
EA	Environmental assessment
Ecology	Washington State Department of Ecology
EIS	Environmental impact statement
EPA	U. S. Environmental Protection Agency
FEIS	Final environmental impact statement
FHWA	Federal Highway Administration
FONSI	Finding of No Significant Impact (NEPA)
ISTEA	Intermodal Surface Transportation Efficiency Act
LEDPA	Least environmentally damaging practicable alternative
LOP	Letter of permission
LOS	Level of service
MPO	Metropolitan planning organization
NEPA	National Environmental Policy Act
NFSAM	National Food Security Act Manual, Third Edition
NMFS	National Marine Fisheries Service
NOI	Notice of intent (NEPA)
NRCS	Natural Resource Conservation Service

NPDES	National Pollutant Discharge Elimination System Permit
NWI	National Wetland Inventory
PDEIS	Pre-draft environmental impact statement
PS&E	Plans, specifications, and estimate
R/W	Right-of-way
RCW	Revised Code of Washington State
ROD	Record of Decision
RTP	Regional transportation plan
SEPA	State Environmental Policy Act
TIP	Transportation improvement program
T&E	Threatened and endangered
U.S.C.	United States Code (Federal law)
USFWS	U. S. Fish and Wildlife Service
WAC	Washington Administrative Code
WET	Wetland evaluation technique
WDNR	Washington State Department of Natural Resources
WDFW	Washington State Department of Fish & Wildlife
WSDOT	Washington State Department of Transportation

Appendix N

DEFINITIONS

Action — A transportation project proposed for federal funding or approval. It also includes activities such as joint and multiple use permits, changes in access control, etc., that may or may not involve a commitment of federal funds. The SEPA Rules define "action" as either project or nonproject actions. Project actions involve an agency decision on a specific project ("construction or management activity located in a defined geographic area"). Nonproject actions involve agency decisions on policies, plans, or programs. WAC 197-11-704.

Adjacent — The term adjacent means bordering, contiguous, or neighboring. Wetlands separated from other water of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are adjacent wetlands. 33 CFR 328.3(c).

Annual average daily traffic (AADT) — Daily traffic that is averaged over a calendar year.

Aquatic resources — All Waters of the U. S./Waters of the State and associated sensitive species (both defined below).

Associated sensitive species — Sensitive species (defined below) that inhabit or depend on Waters of the U. S./Waters of the State habitat for portions of their life cycle.

Average daily traffic (ADT) — The average number of vehicles that pass a specified point during a period. Unless otherwise stated, the period is a year.

Capacity

(1) The maximum number of vehicles that have a reasonable expectation of passing over a given section of a lane or roadway in one direction, or in both directions for a two lane or three-lane highway, during a given time period under prevailing roadway and traffic conditions.

(2) The number of passengers that can be transported over a given section of a transit line in one direction during a given time period (usually one hour) under prevailing traffic conditions.

Categorical exemption	A type of SEPA action, specified in WAC 197-11 Part Nine, that does not significantly affect the environment.
Categorical exclusion (CE)	Actions/projects under NEPA that do not individually or cumulatively have a significant effect on the human environment and that have been found to have no such effect in procedures adopted by a federal agency implementing these regulations (771 for FHWA) and for which, therefore, neither an EA nor an EIS is required. 40 CFR 1508.4.
Certification	Approval by the Federal Highway Administration and the Federal Transit Administration of a local transportation planning process with regard to compliance with legislative and regulatory requirements. (Water quality certification program defined below.)
Cooperating agency	Any agency other than a lead agency that has jurisdiction by law or special expertise with respect to any environmental impact involved in a proposal (or reasonable alternative) for legislation or other major federal action/project significantly affecting the human environment. A state or local agency of similar qualifications, or, when the effects are on a reservation, an Indian Tribe, may by agreement with the lead agency become a cooperating agency. 40 CFR 1508.5.
Corridor	A strip of land between two termini within which traffic, topography, environment, and other characteristics are evaluated for transportation purposes.
Cumulative impact	The impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (federal or non-federal) or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time. 40 CFR 1508.7 or WAC 197-11-330 of SEPA.
Demand	The quantity of transportation desired.
Design concept	The type of facility identified by the project; e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc. 40 CFR 51.392.

Design scope The design aspects that will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle- or person-carrying capacity and control; e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high occupancy vehicles, etc. 40 CFR 51.392.

Determination of nonsignificance (DNS) The written decision by the responsible official of the lead agency (SEPA) that a proposal is not likely to have a significant adverse environmental impact, and therefore an EIS is not required. WAC 197-11-734.

Determination of significance (DS) The written decision by the responsible official of the lead agency (SEPA) that a proposal is likely to have a significant adverse environmental impact, and therefore an EIS is required. The DS form is in WAC 197-11-980 and must be used substantially in that form. WAC 197-11-736.

Discharge of dredged material Any addition of dredged or excavated material into (including redeposit of dredged material) Waters of the U. S. The term includes, but is not limited to, the following:

(1) The addition of dredged material to a specified discharge site located in Waters of the U. S.

(2) The runoff or overflow from a contained land or water disposal area.

(3) Any addition, including any redeposit, of dredged material, including excavated material, into Waters of the U. S. that is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation.

Discharge of fill material Development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and artificial reefs. In addition, placement of piling in Waters of the U. S. constitutes a discharge of fill material and requires a Section 404 permit when such placement has or would have the effect of a

discharge of fill material. The term does not include plowing, cultivating, seeding, and harvesting for the production of food, fiber, and forest products (see 33 CFR 323.4 for the definition of these terms). 33 CFR 323.2(f).

Dredged material Material that is excavated or dredged from Waters of the U. S. 33 CFR 323.2(c).

Easement A right to use or control the property of another for designated purposes.

Effects "Effects" include:

(1) Direct effects, that are caused by the action and occur at the same time and place.

(2) Indirect effects, that are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable. Indirect effects may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.

"Effects" and "impacts" are synonymous. "Effects" include ecological, aesthetic, historic, cultural, economic, social, or health, whether direct, indirect, or cumulative (see definition for cumulative impacts). "Effects" may also include those resulting from actions that may have both beneficial and detrimental effects, even if on balance the agency believes that the effect will be beneficial. 40 CFR 1508.8 or WAC 197-11-330, WAC 197-11-752, WAC 197-11-782 and WAC 197-11-794 of SEPA.

Environmental assessment (EA) A concise federal public document for which a federal agency is responsible that serves to:

(1) Briefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact.

(2) Aid an agency's compliance with NEPA when no environmental impact statement is necessary.

(3) Facilitate preparation of an EIS when one is necessary.

	An EA shall include brief discussions of the need for the proposal, and the alternatives considered.
Environmental document	Any written public document prepared under NEPA and SEPA. The terms environmental analysis, environmental study, environmental report, and environmental assessment do not have specialized meanings and do not refer to particular environmental documents (unlike various other state or federal environmental impact procedures).
Environmental impact statement (EIS)	A detailed written statement as required by Section 102 (2)(c) of NEPA or WAC 197-11-405
Fill material	Any material used for the primary purpose of replacing an aquatic area with dry land or changing the bottom elevation of a waterbody. In addition, placement of piling in Waters of the U. S. constitutes a discharge of fill material and requires a Section 404 permit when such placement has or would have the effect of a discharge of fill material. The term does not include any pollutant discharged into the water primarily to dispose of waste, as that activity is regulated under Section 402 of the CWA. 33 CFR 323.2(e).
Finding of no significant impact (FONSI)	A document by a federal agency briefly presenting the reasons why an action/project will not have a significant effect on the human environment and for which an environmental impact statement will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it (1501.7(a)(5)). If the assessment is included, the finding need not repeat any of the discussion in the assessment but may incorporate it by reference. 40 CFR 1508.13.
Freeway	An expressway with full control of access.
Generated traffic	New traffic that develops as a result of an improvement or land use change.
Guidance	Appendices to this agreement that provide information to assist project managers and reviewers through the NEPA/SEPA/Section 404 process.

High tide line The line of intersection of the land with the water's surface at the maximum height reached by a rising tide. The high tide line may be determined, in the absence of actual data, by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The line encompasses spring high tides and other high tides that occur with periodic frequency, but does not include storm surges wherein there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane of other intense storm. 33 CFR 328.3(d).

Human environment "Human environment" shall be interpreted comprehensively to include the natural and physical environment and the relationship of people with that environment. This means that economic or social effects are not intended by themselves to require preparation of an environmental impact statement. When an environmental impact statement is prepared and economic or social and natural or physical environmental effects are interrelated, the environmental impact statement will discuss all of these effects on the human environment. 40 CFR 1508.14.

Impacts The effects or consequences of actions. Environmental impacts are effects upon the elements of the environments listed in 197-11-444.

Induced traffic Traffic that is increased on a facility or route not by normal growth but solely by an improvement or change in the facility.

Isolated waters Those non-tidal Waters of the U. S. that are: (1) not part of a surface tributary system to interstate or navigable water of the U. S.; and (2) not adjacent to such tributary waterbodies. 33 CFR 330.2(e).

Jurisdiction by law Agency authority to approve, veto, or finance all or part of the proposal. 40 CFR 1508.15.

Lead agency The agency or agencies preparing or having taken primary responsibility for preparing the environmental impact statement. 40 CFR 1508.16 or WAC 197-11-758 and WAC 197-11-922 through 948.

Level of service (LOS)

(1) A qualitative rating of the effectiveness of a highway in serving traffic, measured in terms of operating conditions. Note: The Highway Capacity Manual identifies operating conditions ranging from "A" for free flow operations to "F" for forced or breakdown flow (see definitions appendix).

(2) The quality and quantity of transportation service provided, including characteristics that are quantifiable (safety, travel time, frequency, travel cost, number of transfers) and those that are difficult to quantify (comfort, availability, convenience, modal image).

Metropolitan planning organization (MPO)

The forum for cooperative transportation decision making for the metropolitan planning area. 23 CFR 450.104.

Mitigation

"Mitigation" includes :

(1) Avoiding the impact altogether by not taking a certain action or parts of an action.

(2) Minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or taking affirmative steps to avoid or reduce impacts.

(3) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

(4) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(5) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and/or

(6) Monitoring the impact and taking appropriate corrective measures. 40 CFR 1508.20 and WAC 197-11-768 of SEPA.

Mode

A means of transportation. Automobile travel, rail, air, ferries, etc., are different modes of travel.

Notice of intent (NOI)

A notice that an environmental impact statement will be prepared and considered. 40 CFR 1508.22.

Owner/operator	A state, regional, or local transportation or transit agency or authority having primary responsibility for the operation and maintenance of a specific transportation facility.
Planning stage	The initial stage in the evolution of a transportation project, including comprehensive studies that identify goals, objectives, required services and facilities. Major products of this process are short- and long-range policies, plans, programs, and ideas for projects. Administrators and policy makers use the information to make decisions for implementation of the plan.
Practicable	Available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes. 40 CFR 230.3(q).
Project development stage	That stage in the evolution of a transportation project (following the project scoping and budgeting stage) that includes compliance with appropriate environmental regulations (NEPA, SEPA, Section 404), project design, right-of-way/access plans. During this stage, local agencies and the public have an opportunity to comment on the proposed action, and determination is made that the project will successfully fill a transportation need.
Project proponent(s)	Federal Highway Administration or its designee(s).
Project scoping	A compilation of project data including a statement of the problem to be corrected; what work is needed to correct it (such as lanes, bridge work, safety improvements); estimated cost; manpower data; and schedule. Project scoping is prepared by WSDOT regional offices and approved by the Program Development Engineer.
Project scoping and budgeting stage	That stage in the evolution of a transportation project (following the planning stage) that includes priority programming for project development, preparation and review of project scoping, and initial consideration of appropriate environmental documentation.

Public hearing A public proceeding conducted for the purpose of acquiring information or evidence that will be considered in evaluating a proposed transportation project and/or a COE permit action, and that affords the public an opportunity to present their views, opinions, and information on such projects and permit actions. See 33 CFR 327.3(a).

Record of Decision (ROD) A concise public document prepared by the federal agency at the time of its decision or recommendation to Congress that:

(1) States what the decision was.

(2) Identifies all alternatives considered by the agency in reaching its decision, specifying the alternative or alternatives that were considered to be environmentally preferable.

(3) Identifies and discusses relevant factors including economic and technical consideration, agency statutory mission, and any essential considerations of national policy that were balanced by the agency in making its decision, and states how those considerations entered into its decision.

(4) States whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and if not, why they were not.

(5) Adopts and summarizes monitoring and enforcement programs where applicable for any mitigation. 40 CFR 1505.2.

Regional transportation plan (RTP) The official intermodal transportation plan that is developed and adopted through the metropolitan transportation planning process for the metropolitan planning area. 23 CFR 450.104.

Regulatory agency An agency that has jurisdiction by law.

Resource agency An agency that has special expertise with respect to any environmental issue.

Right-of-way (RW) A general term denoting land, property, or interest therein, usually in a strip, acquired for or devoted to transportation purposes.

Section 4(f) A provision of the Department of Transportation providing protection for public parks, recreation area, wildlife and waterfowl refuge, or historic site. 49 U.S.C. 303 and 23 U.S.C. 138. 23 CFR 771.107(e) and 771.135.

Section 404 permit A Department of the Army (DA) permit to authorize the discharge of dredged or fill material into Waters of the U. S. pursuant to Section 404 of the Clean Water Act (CWA) (33 U.S.C. 1344). Includes the following specific types of permits:

Individual Permit - A DA authorization that is issued following a case-by-case evaluation of a specific project involving the proposed discharge(s) in accordance with the procedures of 33 CFR Parts 323 and 325 and a determination that the proposed

discharge is in the public interest pursuant to 33 CFR Part 320. 33 CFR 323.2(g).

General permit - A DA authorization that is issued on a nationwide or regional basis for a category or categories of activities when:

(1) Those activities are substantially similar in nature and cause only minimal individual and cumulative environmental impacts.

or

(2) The general permit would result in avoiding unnecessary duplication of regulatory control exercised by another federal, state, or local agency, provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal. (See 33 CFR 323.2(e) and 33 CFR Part 330.) 33 CFR §§ 322.2(f) and 323.2(h).

Regional permit - A type of general permit. It may be issued by a division or district engineer after compliance with the other procedures of the Section 404 permit regulations. If the public interest so requires, the issuing authority may condition the regional permit to require a case-by-case reporting and acknowledgment system. However, no separate applications or other authorizations documents are generally not required. 33 CFR §§ 325.2 (e)(2) and 325.5 (c)(1).

Nationwide permit - A type of general permit that represents DA authorizations that have been issued by the regulation (33 CFR Part 330) for certain specified activities nationwide. If certain conditions are met, the specified activities can take place without the need for an individual or regional permit. 33 CFR § 325.5 (c)(2).

Programmatic permit - A type of general permit that may be issued if it would result in avoiding unnecessary duplication of regulatory control exercised by another federal, state, or local agency, provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal. (See 33 CFR 325.2(e) and 33 CFR Part 330). 33 CFR § 323.2 (h)(2).

Letter of permission (LOP) - A type of permit issued through an abbreviated processing procedure that includes coordination with federal and state fish and wildlife agencies, as required by the Fish and Wildlife Coordination Act, and a public interest evaluation, but without the publishing of an individual public notice. 33 CFR § 325.2(e)(1).

Sensitive species Plant or animal species that are: (1) federal listed or proposed threatened or endangered species, or candidate species; (2) bird species protected under the Migratory Bird Treaty Act; (3) species protected under state endangered species laws and regulations, plant protection laws and regulations, fish and game codes, or species of special concern listing and policies, or (4) species recognized by national, state, or local agencies with jurisdiction.

Special aquatic sites Those sites identified in 40 CFR 230 Subpart E (i.e., sanctuaries and refuges, wetlands, mud flats, vegetated shallows, coral reefs, and riffle and pool complexes). They are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region. 40 CFR § 230.3 (q-1).

Special expertise Statutory responsibility, agency mission, or related program experience. 40 CFR § 1508.26.

Traffic The vehicles or persons passing a specified point during a given period.

Waters of the State Lakes, rivers, ponds, streams, inland waters, underground waters, salt waters and all other surface waters, and watercourses within the jurisdiction of the state of Washington. RCW 90.48

Waters of the U. S. Waters within the jurisdiction of the federal government. Includes:

(1) All waters that are currently used, or were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide.

(2) All interstate waters including interstate wetlands.

(3) All other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds, the use, degradation or destruction of which could affect interstate or foreign commerce including any such waters:

(a) Which are or could be used by interstate foreign travelers for recreational or other purposes.

(b) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce.

(c) Which are used or could be used for industrial purposes by industries in interstate commerce.

(4) All impoundments of waters otherwise defined as waters of the United States under this definition.

(5) Tributaries of waters identified in paragraphs (1)-(4).

(6) The territorial seas.

(7) Wetlands adjacent to waters (other than waters that are themselves wetland) identified in paragraphs (1) through (6).

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirement of the Clean Water Act (CWA) (other than cooling ponds as defined in 40 CFR § 123.11 (m) that also meet the criteria of this definition) are not Waters of the United States. In addition, Waters of the U. S. do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the CWA, the final authority regarding CWA jurisdiction remains with EPA. 33 CFR § 328.3(a); 40 CFR § 232.2.

Water Quality Certification Program

The CWA directs each state to certify that work that may result in a discharge to Waters of the United States and that requires a federal license or permit will not adversely affect water quality or violate state aquatic protection laws. In Washington, Ecology is responsible for coordinating and consolidating all concerns raised by state natural resource agencies for issuance of all state water quality certifications under Section 401 of the CWA.

Wetlands

Those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. 33 CFR § 328.3 (b); 40 CFR § 230.3(t).